PROCEEDINGS

OF THE

Third Annual Convention

OF THE

CALIFORNIA LAND TITLE ASSOCIATION

SAN FRANCISCO, CALIFORNIA

August 19 and 20, 1909

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SECRETARY'S NOTES.

MEMBERSHIP. All the abstract and title offices of the State of California regularly engaged in business and owning an abstract plant are invited to join this Association. A number of new members signed the roll at the recent meeting. There are a number of other offices in the State who should join at once. You are next. Make your application by letter enclosing Ten Dollars for the current year's dues.

PRINTED PROCEEDINGS. This is the third year that the Association has given away to all the title offices of this state, regardless of membership, printed copies of the proceedings of the Conventions. The printed proceedings include all the addresses and papers presented at the meetings and the discussion thereon, together with a record of the minutes of the meetings, thus affording to non-members practically all the benefits enjoyed by members at the expense of the members, who pay for the record, the printing, and even furnish the postage to forward the copies. The Secretary was instructed by motion duly made and carried at the recent meeting to notify all the title offices of the State that they can neither buy, beg nor borrow a copy of the 1910 Proceedings without first being regularly enrolled as a member of the Association.

BANQUET. The delegates and their ladies were entertained on Friday evening, August 20, at a sumptuous banquet at the Bergez-Frank's Restaurant. Mr. Lee C. Gates acted as toastmaster. The banquet was tendered by the Title Insurance & Guaranty Co., the California Title Insurance & Trust Co., the Pacific Title Insurance Co., and the Standard Title Insurance Co., all San Francisco title companies.

NEXT MEETING. The next meeting will be held in Los Angeles, the last week in June, 1910. A large attendance is promised.

VISITORS. At our recent meeting we were fortunate in having with us three visitors from the American Association of Title Men. Each of these gentlemen upon invitation by the president addressed us, telling us of the growth of the American Association of Title Men and the growth of the associations in their own States. Their addresses are recorded in these proceedings. Some of their observations deal with the value of the Abstract and Title Men's Asso-

ciations and will prove interesting reading to those who have neglected to join the Association. Mr. W. R. Taylor of Kalamazoo, Mich., was elected President of the American Association of Title Men at its recent meeting in Seattle. He is also prominent at home as an active member of the Michigan Abstracters' Association. Mr. George Vaughan of Little Rock, Ark., is Treasurer of the national organization as well as Secretary of the Arkansas Land Title Association. Mr. M. P. Bouslog, of Gulfport, is President of the Mississippi Abstracters' Association.

TO NON-MEMBERS. You ought to do a little serious thinking about the value of membership in an Association of Abstracters. Mr. Taylor, Mr. Vaughan and Mr. Bouslog traveled a great distance in order to be able to attend the meeting of the American Association at Seattle, Wash., also the meeting of the Washington State Abstracters' Association at Seattle, Wash., as well as our meeting at San Francisco. They all agree that they derived great benefit at all of these meetings. If possible, they intend to attend every meeting of the American Association and of their respective State Associations as long as they are engaged in the title business. Every California Abstracter who attended the third annual meeting signified his attention of being present at Los Angeles next June. They all hope to greet YOU as a new member at that time.

Annual Address by Lee C. Gates

President of California Land Title Association and Chief Counsel for the Title Insurance and Trust Company, of Los Angeles.

Gentlemen of the Convention: You may remember that a year ago the California Land Title Association commissioned me to attend the session of the American Land Title Association, which was to meet a few days later at Des Moines, Iowa. Acting under the authority with which you vested me, I proceeded to the East and attended and addressed the sessions of the Des Moines convention. Mr. Vaughan is here and can certify that I was there upon that occasion, as I can certify to the fact that he was there. The meeting was held on the 19th and 20th days of August. There was a representative gathering present, not a very large gathering, but comprised of representatives from nearly every quarter of the Union. The New England States and farther East were not very well represented, but the South, West, and the Middle West, were quite generally present through their delegations.

A number of papers were read at the convention, and the American Land Title Association was fully launched and projected. There had been one meeting before that at the city of Chicago, which had merely put the Association into the field. The last year's session at Des Moines put it upon its feet. In the election of officers there held, I was made one of the Executive Committee. The California Land Title Association presented its application for membership to the American Association, and became a member, upon the payment of the dues, which were forwarded by our Secretary, Mr. Pierce, some time subsequently to my application to the general Association.

The terms of membership in the American Land Title Association include the payment by a State association of one dollar for each member of such State association. I do not remember how many members we had at the time of the Des Moines convention, but Mr. Pierce forwarded the requisite amount, and the California Land Title Association is now a member of the American association, and each member of the California Land Title Association is also a member, by reason of the fact that the State association is a member of the national association. It will be necessary, if we desire to renew our membership in the national association, for our State association to pay to the Treasurer of the national association the one dollar membership fee for each of its members for the present year.

After the session at Des Moines had closed, a meeting was arranged for this year at the city of Seattle, and Mr. Watson, of

Solano County, Mr. McCarthy of Oakland and myself have just returned from attending the Seattle meeting, which occurred but a few days ago. There was perhaps not quite so large an attendance at the Seattle meeting as at the Des Moines convention, because of the long distance to travel to reach the place of meeting. But it was well attended, nevertheless, and a very interesting meeting had.

At the Seattle meeting, a form of membership badge or certificate was adopted. It consists of a device similar to that which was adopted by the Bankers' Association of the country, of a piece of metal about the size of the paper which I hold in my hand, and upon that is engraved, "Member of the American Association of Title Men". Below it, attached by small chains, are to be the annual renewal certificates, which state, in effect, "Effective until" a certain date, being the date to which the dues are paid. If we continue as a member of the national association, upon the payment of our dues, with the possible additional fee which will be required to pay for the cost of this badge or metal arrangement, you will each receive one of those certificates. Mr. Carmany, in his office below, has a certificate to the effect that he is a member of the Realty Board of the City of San Francisco, and it is similar to that. These can be hung up, and then, as the dues are paid each year, a renewal certificate will be furnished which will be attached to the original.

With respect to the two conventions of the national association thus far held, I may say to you that there is a well-defined sentiment abroad that larger co-operation is necessary in order that the land title men of the country, those men who are engaged in the business of assuring titles, may confer, and in order that the work may be brought to a better uniformity of basis, and also to enable them to take such steps as may be necessary to offset some of the recent movements which are taking place in various parts of the country looking to the devising of other means of title evidence or assurance.

In that connection, in some of the States there are country-owned title abstract books, and various other devices which have grown out of a sort of unrest among the people, who are desirous of obtaining some other means of title examination or title assurance or title knowledge than they now have. This sentiment is more acute in some States than in others. In places this agitation takes the form of the Torrens land certificate system, of which you all know more or less, some of us less than we ought to, and some of us more than we would like to. We have it in this State, and they have it in various other States—in Washington and in Oregon and Minnesota, I believe, and in Colorado, Massachusetts, and Illinois. I do not know whether any other States except those enumerated have it. If there are others, they do not occur to me at the present moment.

All of these matters are a part of an unrest which is being felt in the country, which grows, in part, out of the fact that the title companies have not fully met a demand of the public as to the means

of title assurance. The American Association of Title Men, at both its sessions at Des Moines and Seattle, expressed itself as desirous of devising ways and means better than those which we now have, to offset this agitation, and to counteract it as far as possible. In fact, the sentiment of the meeting at Seattle was that a determined stand should be taken by the title men of the country, through educational means, against the present Torrens system and the continuance of the practice of that system of putting land within the Torrens law. Because, in all the States of the Union, wherever the Torrens land act is in force, Mr. Kenney, of Madison, Wisconsin, tells me that land once placed under the system can never be removed from it—that is part of the law, that is one of the provisions of each of the laws of that kind, it is a provision of the law of the State of California, the idea of the advocates of the system being that, little by little, piece by piece, as land is placed under the system, it will make headway and can never go back, because every time you get a parcel of land under the system, it cannot be taken out, and they cannot lose anything, but they will be gradually gaining, and that in time, unless it be checked, either by judicial interpretation of the law declaring it to be invalid, as I believe it to be, or by the growth of public sentiment as to its futility, it will make serious inroads upon the land titles of the country and deprive the title companies of a part of their employment and part of their revenue.

As I stated a moment ago, we have in our State laws the provision that land once placed under the Torrens system shall remain there. The purpose is evident and obvious, namely, that there can be no retraction after once the step is taken. This, however, has another result, because many men are deterred and debarred from putting their land under that system, knowing that once it is there, they cannot take it out. In some respects, therefore, it militates against rather than in favor of the law.

This brings me, gentlemen, to an idea which I have always had, and which was strengthened by attendance on the meeting at Seattle, and which I bring to you, and that is the duty which we owe to a certain class of those among us. In my connection with the Title Insurance and Trust Company below, I have always had and held to the idea that there is one individual who commanded the best efforts of the title company, my own in particular, and all others as well, the man who really stands back of all of us, the man who pays all our salaries, the man who provides all of the dividends that we pay upon the capital stock of the corporations with which we are connected, the man who builds our plants, who, in fact, is the builder of the entire business of title insurance—and that man is THE CUSTOMER, the man who stands at the counter and leaves his order, who employs the title company to give him that which he employs them to produce for him, the man who pays the bill, the man who is your boss and mine, the man who is obliged to have his title certified, to

have it abstracted, or to have it insured. That man is the man I am thinking about in the remarks I will make to you this afternoon. That man's name, you will recognize it at once, is legion, and that man is the man who is asking of legislators, who is asking of States, who is asking of corporations, who is asking of individuals who are engaged in the business of title insurance, the best thing that can be produced for his benefit. It is the duty of the title men of the country to produce for him any improvement that can be made in the methods that shall be used for his benefit, and to give him the assurance of title which he is required to have in the event that he either sells or mortgages his property. This is the gentleman that I have in my mind's eye, and he is the man that I am trying to picture to you this afternoon. It is his demands, his purposes, his wishes, his necessities, that are before us; and it is this gentleman, too, who has largely been in a state of unrest with respect to what he has received in the past. He is entitled to the very best the profession can give him; he is entitled to nothing short of that. I always think of the song that runs, "And the best in the house was none too good for Riley". If you will call him Riley, and then think that the best in the house is none too good for him, you have the man I am thinking of and talking to you about this afternoon. ARE YOU GIVING HIM THE BEST THAT CAN BE HAD? Are you giving him the best that the title companies and the most advanced title men of the country have devised in his behalf?

The old method, you know, has been usually to give him an abstract of title, and then allow him to carry it to his attorney and let the attorney pass upon it and render his opinion, and upon that opinion the parties to the transaction, whether it be vendor and vendee or mortgagor and mortgagee, proceed to act. But with this method he is not quite satisfied. There are a number of reasons for his unrest. It is cumbrous, to begin with. It is slow, in the second place. In the third place, having obtained the opinion of one attorney upon the title, when the next transaction occurs and that abstract is to be used as the basis of that opinion, he is probably obliged to obtain the opinion of another attorney, paying to him a price for the same service that was paid for the opinion in the first instance, duplicating service and necessarily also duplicating the cost of that service. That system has made our customer's method of title transfer cumbrous, clumsy, slow, and expensive. He has had to pay for both the transcribing of the record and the opinion of an attorney. The record of an abstract of title is largely manual labor. You are simply rewriting that which appears of record. It is a sort of transmutation of the county records, to provide that which is to be examined by the skilled examiner, and the opinion derived therefrom, which is in effect the title. Of course, the public as a rule are not very well informed as to what title is. Title is the means by which a man holds his property. "Title is the means whereby a man hath

just possession of his property",' is the definition which Mr. Rixford and I learned when we were students. But to most people, the abstract or paper evidence is the title. But the abstract is really but a transcript of the records themselves, it is transmuting the records to provide the basis whereon an opinion can be given. And really, so far as the purchaser is concerned, the opinion of the attorney is the title to a man's property. But we all know that A, who may examine an abstract of title today, may say "This title is good", while B, a different man, when he comes to examine the title years later for another purchaser, thinks there has been a mistake which has been passed over or slurred over by the former examiner, or some things which ought to be noted. It is this duplication of service and of compensation for that service that has set much of the unrest in motion in this country. Therefore they have said "Let us have an official examination, and then that never will be examined again—we will just continue that from time to time."

That was suggested, even before the Torrens agitation, in some localities—the necessity or advisability of providing some sort of a means for certifying titles, similar in effect to the Torrens certificate. To begin with, let a certificate represent the condition of the title at a certain time, and then, without going back over that same work, to have that continued from time to time, so that the continued product represents, not a repetition of service in examining, but a continuation of service in examining only the continuation of the title from time to time. This resulted with us (and you will pardon the apparent egotism of these remarks, because I am speaking now largely as to Southern California) in our adopting a system of that kind. And there is abroad throughout the country a sentiment that that system, modified to meet the circumstances and amplified and improved and rounded out to cure the imperfections which have been shown in its growth and development, is the system that should be adopted more generally throughout the country. I bring that message to you from the two conventions of the national association which I have attended and my contact with other men who are engaged in this business and seeking a solution of this problem.

We have in the cities of this country, in San Francisco, in Chicago, in New York and Philadelphia, and I think in Pittsburg and St. Louis and other cities, a system of *title insurance* which is the best form of title assurance that has yet been devised, a form of insurance which gives to every man who deals in titles the knowledge of the fact that his title is good, and indemnity in case the information which is furnished him or the insurance policy which has been written for him, shall prove to be wrong. Of course, title insurance companies have to be backed by aggregations of capital to make them responsible. But, as compared with every other system that has been devised, the Torrens system not excepted,

they are infinitely superior to anything else that has yet been offered to the public. I should have included the city of Los Angeles in giving you the list just given, because I assure you that we write just as good policies of title insurance as there are written anywhere in the country. That form of assurance, I repeat, we believe to be the best form of title assurance that can be devised. But our people in Los Angeles have never taken as fully to the policy system as they have to the certificate system, which we began the use of about the year 1885.

But throughout the country, outside the large cities, the question is asked, Is it possible to introduce this method rather than the method that we now have?

I take it that many of you listening to me this afternoon are engaged in the writing of abstracts of titles, are not engaged in writing certificates of title or policies of title insurance; that your people have not yet taken to the certificate method or to the insurance method; that they still insist upon an abstract, which they carry to their attorneys for him to examine the title, and then proceed according to his opinion. To you I say, it is possible to introduce these other methods gradually, no matter whether your company be large or small, and I will tell you why. I can instance one historical example down in the southern part of this State, in the counties in the south end of California. In Ventura, Riverside, San Bernardino and San Diego counties, there are a number of smaller companies, all of them writing certificates, and their certificates pass current. They do not write policies of insurance, because they have not capital sufficient to enable them to qualify under the law. But they are able to write those certificates and have them go out and have the people receive them, receive them willingly, because they think that that is the best form that they can use, and it is by far the most convenient. It is quicker, and it is a finished product—there is nothing more to be done to it. With a certificate of title or policy of title insurance, you have something which shows the title as it stands at that moment. It does not require the interpretation of legal counsel. It is equivalent, in other words, to the abstract and the attorney's opinion combined, and in addition to that, it has behind it the responsibility of the company that issues it. In other words, it is a certificate of a legal opinion, with indemnity in case it is wrong.

So I say to you that that can be done in the counties outside of the larger cities, because we have done it in our southern counties. Your abstract company is liable for any mistakes it makes in the compilation of the abstract. The abstract company could become additionally liable for a mistake in the estimate of the title, as shown by that abstract, and that responsibility would be probably as great and in nearly every instance greater than the responsibility which would be assumed by an attorney who might write an opinion upon that abstract.

I think that all lawyers will agree with me upon this: That when an attorney writes an opinion upon an abstract, he is liable only for a mistake which he makes in case he has been negligent, in case he has not used ordinary diligence in the examination of the abstract and in the examination of the law bearing upon the abstract itself, and in the making up of his opinion in that respect. If he uses diligence, he is not obliged to be certain as to the law, he is not obliged to be absolutely right, he may make, honestly and diligently, a mistake, and he will not be liable in case he made such a mistake. A title company or a title examiner who writes an absolute statement or a certificate to the effect that the title is unequivocally vested in a certain person, is liable, no matter whether he has used diligence or been negligent. Because he has uttered an unqualified statement. In other words, the liability is greater. Therefore, your customer, the man for whom I am pleading this afternoon, is better protected in that respect; that is, there is greater liability for insurance in a certificate executed by a title company or a title examiner, than there is in an opinion by an attorney. And there is also more responsibility. That brings me to another question. There is a very great difference between liability and responsibility. Your title companies are usually capitalized for a considerable sum, while a lawyer is responsible to the extent that he is able to respond in damages. I have said to you that the liability to the customer of the title company is greater than that of an attorney who renders an opinion. To that I now add that the title company's responsibility is also much greater.

With all of these facts in your favor, gentlemen, you ought to be able to establish a line of title assurance among your customers, and to prove to them that the service which you render for them is better for them, more responsible to them, is far more efficacious, far more expeditious, has much greater solidity, and is, in fact, the development of a new system which furnishes to them a finished product and will enable them to dispose of their property with much less loss of time and liability and vexation and annoyance, and with much greater certainty and safety to the man who either buys or loans his money upon the same.

I know what your answer is in many cases: The attorneys of our community are opposed to that. That may be true, and it is true in most localities. The attorneys look upon the examination of abstracts as a part of their legitimate work. And in a sense, that is true. But you can provide yourself with legal counsel that in a short time will become adept and expert, specialists in that line, who can examine a title with great accuracy, with more acumen, and with greater safety to the customer than the ordinary practitioner of the law. In the city of Los Angeles, and I am obliged to return home now and then, notwithstanding the fact that we have a strict injunction laid upon us never to speak much of our city when away from home—in the city of Los Angeles you may take an abstract to an attorney, and he will say "I don't want that. You take that up to the title company

and let them examine it. They keep abreast of this work"—because most lawyers of active practice, aside from those engaged in this particular line of work, do not keep abreast of all of the fine distinctions of law that have been made by the Supreme Court from time to time, and you have got to keep abreast of the law and in touch with the decisions, because, after all, gentlemen, the greatest danger in the title business lies in the fact that, the Legislature meets every two years, and the Supreme Court is in session all the time. If it were not for those things, we could with greater certainty ascertain and certify titles.

I know that one cannot make a very vivid exemplification or a very interesting address upon the law of titles. I am, indeed, surprised, that you have sat and listened to me as long as you have. But you are engaged in the business, and it is a technical science, it is a fine science, and you may qualify yourselves to do the work better than it can be done by any other class of men. It is possible for you to do it.

At Des Moines last year I was given the subject "The Los Angeles Way," which was quite a shock to my modesty, but I was obliged to exemplify to its fullest extent that way, telling them how we do business in Southern California, and incidentally how we do business throughout the whole of the State of California. I found this feeling abroad everywhere, both then, and this year at Seattle, that there must be found some way of improving the methods that we use, in order that we may give to the customer and the man who employes us, a better form of title assurance, which will be a better protection to him, and affords him a means of knowledge as to his title that he has not possessed heretofore. And I have said, therefore, in response to a number of letters that have come from all parts of the country, that one way you can adopt will be, if you desire to enter into the certificate business, to let it be known that you have employed a lawyer of first-class ability, who is to be your adviser, and who is to determine all questions of title that arise in your examinations. And when it is known that your certificate represents the faithfulness of your work in the compiling of an abstract and as well the sagacity of the opinion of that lawyer in determining where the title rests, you will be able to have your certificates in time become current and pass as such to the exclusion of well nigh every other form of assurance that may be offered to any intending purchaser or encumbrancer.

The people who are most interested with you in the question of good titles are the real estate man, the purchaser and the mortgagee. So far as the owner is concerned, you cannot do much good and you cannot do him much harm. You can do him some harm by certifying a title to him that is not good. You can sometimes do him some good by certifying a bad title good, and enabling him to get rid of it. But the man to whom you must give your closest attention, and who looks to you for his fullest protection, is the man who is investing his money and the real estate agent who helps him to invest—although

sometimes we look upon the real estate agent as a sort of a necessity only—a necessity that we ignore, but a necessity nevertheless. But, after all, he is one of the active agents, one of the most active forces in keeping your real estate market alive. We have an army of them in the south, but there is an army of them everywhere. These men are the men who want the very best means to enable them to carry through the sale which they are laboring to make, to protect the purchaser and the mortgagee. The people you are to protect, then, are the vendee, the real estate agent, and the mortgagee—they are the men who have to have protection. The man who holds the title has a good title or a bad title as the case may be, and he is interested in getting rid of it if he has a sale to make—he does not care very much about what evidence of the title he furnishes. He may furnish the cheapest, and he will furnish anything that will enable him to get rid of his property. There is nothing sinister about that, and I am uttering no complaint. It is a part of the human nature of the transaction. But the man who buys, the man who lends his money, that man wants a good title. The real estate man wants a good title, and he wants a title that is clear and explicit, in order that the deal may be closed expeditiously. But the man who buys and the man who loans his money want to know that the title is good, and they want the best evidence they can get. So they are really your employers. The owner may be the nominal employer, but the man who is paying his money or loaning his money upon the property is the man who is your real employer, and the man to whom you owe the best service that you can devise.

These are some of the remarks that I have had in my system for more than a year past respecting the province and the purpose of this association and the men and women engaged in it. It is to furnish something better than we have. It is to improve upon the system now existing. It is to march forward along the line of progress, rather than to continue to stand behind the intrenchments that we have built, and to expect the public, with all the other remarkable forms of advancement and progress that are evident upon every hand, to go forward while we are sitting still. It is not in the nature of things that that shall be done. The profession of the law, you know, is about the only one that keeps its eye constantly turned backward—we of the law are always looking for a precedent. Medicine and every other profession and calling is looking forward. Medicine and theology, you know, can afford to speculate and guess at things. But the lawyer does not dare, because he must know, and he can only know by looking backwards. But our business can look forward, and we can advance along the lines indicated by these demands. The time for allowing three or four week to expire between the time you begin your examination of title and the time that you close your deal, have passed. We try to carry a matter through with us, under our system in the south, in from five days to ten days. If there is no trouble with the title, we can usually carry it out within ten days in

almost every instance, and sometimes do it within five. If we are overburdened with work, it takes a little more time. But the system would permit, if we could follow an order through without allowing it to be sidetracked anywhere or to fall by the way, by reason of pressure of other business, that almost any kind of an examination should be closed within ten days, and when we close it, it is closed, that is, the whole matter is finished, it is not a mere abstract which has to go out and remain with some lawyer, so that he may dream over it a week or ten days or three weeks or even more. The celerity of modern business, the modern method of progression, the modern method which requires that we shall do today or tomorrow the things that belong to today or tomorrow, and not pass them on, is the method that requires this development and improvement in our system.

Away out on the western point of the city of Seattle, jutting out into the Sound, that magnificent body of water that wraps the city round about, is a point that was called by the Indians "Al Ki Point." The Indian signification of that word is "bye-and-bye." Years ago they fixed that name upon the point. Bye-and-bye a city came, bye-and-bye a city has been located there. But the Indians dream and dream and dream. Modern business will not permit us to name any part of our business as "Al Ki." It is not bye-and-bye with us.

It is now. Into the business offices that you go now, you will find hung the legend "Do it now." Celerity, promptness, expedition, safety on the part of the abstract men, the title men of this country, is something that they must adapt themselves to in the onward march of events, to the end that they shall give to the consumer a system which shall more fitly represent the progressive order of things than is at present in vogue.

I think that is all I have to say to you, gentlemen, by way of annual address. These are some ideas that I have had in my mind, and I believe they are in the mind of nearly every title man in the country, and they are presented to you with the profound conviction that it is up to us to "beat the Torrens system to it", if we are to continue along the line of prosperity in our chosen profession. And it is a profession, if we make it such. It is part of our duty to take this matter into consideration, and to ponder upon it and to act upon it.

Gentlemen, I thank you. (Applause.)

MR. McCARTHY: What is the estimated cost in the examination required in the Torrens system?

THE PRESIDENT: It depends a good deal upon who makes the estimate. The Torrens system's friends claim that it can be made for only a few dollars. They fail to take, or refuse to take into account, the cost of the books and the cost of maintenance to the general public. They only figure what the individual has to pay to the registrar, and the fees are usually fixed by law. The cost is a matter really not yet determined. But the best estimates, both from England and Australia, and from Chicago, where the largest amount of regis-

tration has occurred, is that it is vastly in excess, talking of the cost, of the cost of certifying title and the transfer of the same under the ordinary method now in vogue. That has been brought to their attention, and a good many of the advocates have answered it by stating that it is only in its infancy yet, and with time, things will smooth out and it will cost less. But it has been abandoned in many cases because of the excessive cost of keeping up. That is saying nothing of the danger that attends it.

MR. RIXFORD: About what does it cost, Mr. Gates, for your company to issue its ordinary certificate of title?

THE PRESIDENT: Our charges, Mr. Rixford, are based upon two things. Originally we missed fire on one thing: We did not take into account the value of the property, and we wrote a certificate, simply certifying the title without reference to the value of the property or to the risk which we ran, basing it solely upon the amount of work we had to perform. We found that that was illogical and unbusinesslike. We now seek to base a charge upon the amount of risk which we incur and the amount of work to be performed. In writing a certificate upon a lot worth $2000, say, where the amount of work is not excessive, if it is a chain of title which is not more than fifteen or twenty or thirty instruments in length, the charge would be anywhere from $15 to $25. If it were worth $10,000, the charge would be something like $75, because we charge then for the increased responsibility, the risk, as any other insurance, because a certificate of title becomes in effect an insurance.

MR. VAUGHAN: Does not the public insist upon a schedule of rates, as they do in the case of abstracts?

THE PRESIDENT: No, they do not. The price to be paid for the certificate is a matter of contract, and the man who has a certificate to be made usually comes to the company and asks what it will cost. We ask him what the property is worth—that is one of the first questions asked him—and then we look at our books and see how much work is to be performed, and we make every price according to the circumstances relating to that particular piece of work. We endeavor to get about fifty cents for the examination of each instrument, in addition to $5 to $10 a thousand for each thousand of value. Policies of insurance are based upon much the same rate, except that they are higher—it is a better form of assurance, and worth more.

Certificates of Title versus Abstracts

By James N. Watson, of the Solano County Abstract Company.

THE PRESIDENT: The next upon the programme is an address by my fellow traveler who has just returned from the north with me, Mr. James N. Watson, manager of the Solano County Abstract Co., of Fairfield, California, whom I now introduce to you. (Applause.)

MR. WATSON: Mr. President, Ladies and Gentlemen—As Mr. Gates has told you, I have just returned from Seattle. Upon returning to my office yesterday, I found a letter from Mr. Carmany, wanting to know what my subject would be, and also a letter from Mr. Bacon. I really did not know for the moment what subject I should talk on, or what kind of a paper I should prepare, and it was after 12 o'clock last night when I determined upon the matter. So you may

accept the paper for what it is, considering the short time I have spent on it. I am going to follow out very much the line of thought that Mr. Gates has suggested here. Our company is a small one, located about fifty miles north of San Francisco. We have Spanish grants in our records dating back to 1840, and we have all the hard and knotty things to deal with on the subject of land titles that you have here in the city. Property in most cases is cheap, and the cost of abstracts is very high, owing to the voluminous number of transfers, and the amount of litigation. It has been very hard considering the great expenditure necessary in putting in a plant, to get anything like wages for the work of preparing an abstract.

For my subject, I have taken "Certificates of Title Versus Abstracts."

Abstracts of title are practically a thing of the past. They date back beyond the discovery of America.

There are many definitions for an abstract of title, but in my judgment nothing is more comprehensive than a witness. Now the question arises, What kind of a witness is this abstract you are about to examine? Mr. Rixford recently had a "witness" from our county that he had a great time trying to examine. Is it a good, clean, clear, concise statement (like that of an intelligent human witness) of all the facts, or is it like one of those base, ignorant, incomprehensible witnesses which we have all seen on the witness-stand, from whom no counsel, judge or jury can obtain sufficient facts of material value? Of course, it is not always the fault of the abstract company; it is merely the record; but in nine cases out of ten the abstract company is in possession of certain facts of which the ordinary examiner knows nothing, consequently he is at sea, and in many instances the examiner has a very vague idea how he should proceed to perfect the title—I am not after the attorneys at all—the above facts are generally known to title men—and usually he has to consult with the parties who compiled the abstract. This means delay, and delay means disaster to the parties wishing to sell or borrow.

The examiner must necessarily have practiced from fifteen to twenty years to attain the general knowledge that the abstracter usually acquires in three or four years. Why? Because the abstracter will make at least one abstract a day, while the attorney will not see more than three or four abstracts a month. Hence, the abstract company with an up-to-date plant, skilled searchers, and a good attorney, can prepare a search and opinion in less time and with more accuracy than can be obtained by first preparing an abstract and then securing the opinion of an attorney on the same. I might say, we are using the same forms that Mr. Gates left at Sacramento some two years ago, and it has only been within the last year that we have been issuing certificates.

How we introduced certificates in our county: We selected a title which had many irregularities, prepared our search showing the condition of each and every instrument, wrote our findings on the title

page thereof, making exception to all the incumbrances and irregularities; then from this we prepared our final certificate, took it to our attorneys, sat in bank with them on the title; then showed them our findings and then the certificate—a finished product.

They at once accepted our certificate, realizing at the start that it was not our intention to take the work out of their hands, but instead of their having to examine thirty or forty pages of an abstract, they could see at a glance the exact conditions and knew full well that they could obtain just as much from their clients to perfect the title as they could obtain after a long and tedious examination.

Another thing we find, I might remark here, is that when an abstract is taken to an attorney, and he finds the title good, a client does not expect to pay him the same as if he had found some irregularities or objections. And in many cases I have known where the attorney has found discrepancies, so that he might charge a good, round fee for his services. The general public does not take into consideration that it is just as hard to check up an abstract, figure out the interests, and find title, as it is if there is an irregularity or omission in it.

The true meaning of an abstract of title is understood by a comparative few. In our county the population is largely Portuguese. After procuring an abstract they walk away with it under their arms, with a broad smile and with the vague notion that it is their title, and that the title is perfect because they have succeeded in procuring an abstract. Abstracts in our county have been used in this manner for the past thirty years, and they never think of obtaining a lawyer's opinion on the same. A few weeks ago we prepared a certificate of title to a certain lot in our county seat town. We took exception to a homestead which had stood on the property for about forty years. During my absence and while in Seattle, I was informed by our Superior Judge that the party owning the property called at our office one morning, shot-gun in hand, looking for myself. He explained to his Honor that Jim Watson had spoiled his title; that he had lived on the property for three years, payed all the taxes, and it was all right until he, Watson, spoiled it. The fact is, that had an abstract been made, no doubt it would have been tendered and accepted without examination, and that one of our local attorneys would have been $50 out of pocket. He is now suing to quiet title.

Only a few months ago, a minister of the gospel, a man of average intelligence, requested us to make an abstract and insisted that we must make the property appear with a perfect title. I took him to task by asking him if he had ever met a perfect man. He left our office, wiser if not richer.

The certificate of title is the only practical means yet devised for dispatch in the transfer of real property. For instance, take an abstract office with equipment and working force, with a capacity of, say, one forty-page abstract per day. This means typing for two

ordinary stenographers, a searcher and draftsman combined, while the same force, although more competent assistance is necessary, can make three certificates in the same space of time, involving title of the same size. Consequently the certificate can be made in just one-third the time of an abstract. Then, too, your client cannot argue with you that there were just so many pages and that you charged so much. They have no idea how long it took or how many instruments, probate or civil proceedings, were examined.

We find the issuance of certificates very much more profitable and with very little more risk than that of an abstract, and most of our attorneys are too busy to waste time examining a voluminous abstract. We have a schedule of rates for abstracts. But not on certificates, and the client cannot tell anything about the time expended or the size of the abstract, and we make our charges very much as Mr. Gates has said they make theirs in the South, according to the amount of work and the value of the property. We find less trouble in collecting and getting a just compensation for our services with the certificates than we do under the abstract system.

Of course, we have met with some opposition, but those who fought our certificates hardest are now our best friends, for they (the attorneys) soon discovered that the certificate was demanded by their clients, and if they refused the certificates and demanded an abstract, the client lost no time in securing an attorney who would accept it.

When the owners of real estate realize that they can obtain a certificate for less money and with less delay, they are going to insist on getting the certificate.

Recently we have had many calls for abstracts and certificates on the same property by the same person at the same time. They explain that the abstract shows all the transfers and that the certificate is our opinion on the same.

A local attorney, a few days ago, in our office, advised his client to purchase a certain piece of land, stating that the title to the same was good. His client immediately told him that he would have nothing to do with the same until after we had issued our certificate. This was quite an embarrassing situation, because the attorney happened to know. He had had a good deal of experience with that particular property, and he was quite put out at the time. But the fellow said no money would pass until we issued our certificate. No argument on our part would induce this party to do anything until we had first passed out the certificate.

Certificates of title have come to stay, and the abstract company that refuses to issue them will find itself in the background in the very near future. I thank you. (Applause.)

MR. RIXFORD: Mr. President, the remarks of yourself and Mr. Watson raise a question in my mind with regard to the facility of getting out a certificate of title as compared with the time that it

takes on a policy of title insurance. Mr. Carmany and myself understand this: In our practice here, we have a plant, and everything in our plant is perhaps made up in complete abstracts down to a certain time. Since that time, all new instruments that go on record affecting the title are of course posted against the land—you all understand that. What I want to find out is, What is your particular process in that connection? Your plant, I presume, is made up in the same way?

THE PRESIDENT: Yes.

MR. RIXFORD: For instance, you are asked to make a certificate of title to a given lot of land. You go to your foundation abstracts, perhaps, then you go to your posting books to get all the rest of the conveyances and instruments affecting it. You abstract them and put them in the abstract form, or have you somebody who is competent to take those things and pass upon them without reducing them to abstract form? That is a question, of course, that has a very important influence on the matter of time. You catch my idea?

THE PRESIDENT: Answering for myself, we regard in our plant that possibly the most valuable part of the plant is the information which we have gathered from time to time as we have gone on in the transaction of our business. We have, not an abstract in our office, but we have really a set of property indexes. When we have examined the title to a tract of land that has been subdivided, we write what we know as an office abstract, or an office certificate, or a base title statement, which will show the condition of the title at the time of the subdivision, we will say, of that particular tract of land, that it was then all vested in John Jones. We would post that certificate to the property, to that tract. If an order comes for a certificate upon a lot in that tract, we go to that certificate and start from that point, and make our examination from that date, not an abstract, but it is a certificate which is made. We will then go to the books and make up a chain of title upon sheets which are prepared specially for the purpose, wherein the grantor, the grantee, the instrument, the date of recording, and the certificate are shown, and we place each separate instrument on a separate sheet. That is made up by what we know as our chain-maker. The chain-maker turns it over, then, to the searcher, and the searcher goes over the books again to verify the work of the chain-maker, to see that he has on the chain of title all the instruments that affect it. The searcher then goes to the Courthouse, goes to the original records, wherever they are, and he makes, not an abstract, but upon blanks which I am sorry I have not here, because they would exemplify more fully than my words will do, how he is able very quickly to make an office abstract of such instruments as relate to that title from the date of the statement with which he begins—upon such blanks, he makes such notes as amount to an office abstract of that kind. He is required to show the property, if the description is correct, and if there is any variation he notes that; he is obliged to show that the signatures are correct, what sort of a deed it is, whether grant or quit claim, whether any reservations or additions are inserted therein, and, if they are, he sets them out in full; whether it is properly signed and properly acknowledged. Of course, the searchers are skilled men. That becomes a chain of title in which the questions pertinent and important as to substantial parts of the instruments are all answered by "Yes" or "No", showing that his attention is directed to the very material parts of the instrument. He makes that chain, and does it very quickly, upon blanks. In probably five or ten minutes he can examine an ordinary instrument and make his notations so

that it is perfectly intelligible to the examiner, who follows him. After he has examined that way, in pencil, all the instruments affecting the title, he returns to the office, and at his desk writes up the title as he conceives it to be. That is, it is his estimate of the title. He writes it just as an attorney would write his certificate, and turns that over then to what we know as our examiner. An examiner takes it and looks over the entire chain. He does that as Mr. Rixford would do with an abstract handed to him. He would glance over it—he can do it quickly because of the method that has been used—and if he finds that the searcher has properly written the certificate, he marks it "O K", or "Approved", and it then goes to the copyist and it is written up in its finished form.

MR. RIXFORD: The searcher, then, certifies any encumbrance that appears?

THE PRESIDENT: Yes. He puts everything on his chain, and if there are any unsatisfied encumbrances, he writes them into his certificate. The examiner does not have to write the certificate at all, unless he desires to change it. Sometimes, in fact, in the great majority of instances, the searcher is correct, because, as I said, our searchers are all skilled men and selected for that purpose. But the examiner is an exceptionally skilled man, an older man selected for his fitness and ability and acumen as well as experience. Sometimes the examiner has to rewrite the certificate, because he does not agree with the searcher at all. When there is a distinct point of difference, or some question arises, that is usually submitted to the law department, which does nothing but to answer questions. That department has the easiest job in the office—as Mr. Rixford will understand. When the examiner has finished it, he turns it over to the copyist and the copyist makes the copy. Instead of a finished abstract, we have that abstract, prepared in that way, and every certificate written, we post to the property. That is posted in a different kind of ink, so that if we are asked to write a certificate of title today upon a lot that we wrote a certificate of title upon last week, we can write the certificate, probably, without doing anything more than copying the instrument we had written the week before, making sure that nothing has been placed of record in the meantime, and charging full price if he doesn't know of it—you see we charge for having it. I remember that years ago we had a customer who had a large orchard upon which we had written a certificate, and as to which no transfer had been made since the writing of that certificate. When the second certificate was desired, we charged the price for writing the certificate, and he insisted that we should make that a mere nominal price, because we had certified the title to him before. He argued, "Why, Gates, you can write that title. It won't cost you three dollars. You know all about it. Look at your books, and see that there is no change, and all you have to do is to dictate a certificate." I said "I know that you have owned that property some three years." It was a very fine orange orchard, and I knew he had sold oranges off of it in the three years sufficient to pay for the land twice. I said to him, "You have got all your money back in the three years that you have been there. Now are you going to give the land away, because you have got your money back?" He would not agree to do that, and he therefore agreed that we might charge a reasonable fee for our certificate of title. That is a disgression, however, from Mr. Rixford's question.

MR. RIXFORD: Your explanation is quite lucid. Your system is different from ours. We do have our searchers put it in the form

of an abstract. But after all, your system is tantamount to that. We go direct from the searcher to the attorney. Our searcher does find a fee and reports it in the abstract, and that is the way he gives it to us.

THE PRESIDENT: That is practically the same as our plan, except that I should say, as to one thing, that the law department proper examines all court proceedings, we examine all the law proceedings, and we have referred to us all questions of law or doubtful questions respecting the vesting of titles. But the examiners are in effect lawyers, also, to the extent of the field which they cover.

MR. RIXFORD: I think the result is practically our own, and the purpose of the question was to see if we could facilitate our reports any by the adoption of your system.

THE PRESIDENT: Do you wish to say anything upon that subject, Mr. Watson?

MR. WATSON: Nothing more particularly than that the printed blanks are there and the questions are there to be answered. We practically have an abstract in pencil because they are there and arranged in order and according to date, and it amounts to the same thing, but there is less work. It is done with greater dispatch by having these questions answered "Yes" or "No". When they come back and you sit down to make your examination, you know exactly what the situation is at a glance, and if there is an irregularity, it is noted, so that you have that, too.

THE PRESIDENT: I may say this in connection with that. Possibly the weakest link in our chain is the examination of the instruments by the searcher. There is nothing to check him—nobody goes over that part of the work so as to verify what he does. But, knowing that, and knowing, too, that the tenure of office of the searcher depends upon his accuracy and correctness, he is very careful indeed in making that examination, and we rarely find a mistake. It is true, gentlemen, that abstracters sometimes make mistakes. The only people who are invariably right are the owners of property.

MR. RIXFORD: We have one system of checks with us. For instance, the daily work is taken off, and that is very carefully compared, and the searcher ought to compare that daily work and also compare the work with the recorded instruments. There is a check if they will only do it. But sometimes they get in a hurry, and do not do it.

Country Abstracts

Address by E. H. Rixford, Attorney and former Manager of the California Title Insurance and Trust Company of San Francisco.

THE PRESIDENT: I know that you gentlemen will all concur with me when I say that we shall now be very glad indeed to hear from Mr. E. H. Rixford, who has taken a large part in all of our programmes and exercises, and an active interest respecting what we are doing elsewhere. He is the head of the law department of the California Title Insurance and Trust Company, and is a recognized authority upon title matters. Ladies and gentlemen, permit me to present to you Mr. Rixford. (Applause.)

MR. RIXFORD: In treating the subject of "Country Abstracts", I take it from the standpoint of an attorney who is examining an abstract which is made in a remote county. That is the reason why, as compared with any other abstract which we have here, we call it a country abstract.

You gentlemen of the remote counties will make an abstract, possibly, for the use of an attorney close at hand, or you make an abstract to come to San Francisco, to be examined by an attorney here. If you are making an abstract to send to us here, of course you keep in mind, and you must keep in mind, that we have not access to the original records. If any question arises as to the correctness of an instrument or the sufficiency of a judgment-roll, we cannot go and look at it—it is a physicial impossibility. Therefore, we are obliged to rely absolutely upon the abstract as we receive it from you. There are cases, with which no doubt all of you gentlemen are quite familiar, in which an attorney near at hand will ask you to leave out a great many things, saying that he knows all about them. He is acquainted with your local conditions. But that we cannot do. The question may arise in your mind, then, whether under any circumstances it will be safe for you to leave out the things suggested. You do not know into whose hands that abstract may afterwards fall. It it all right for the man who can examine on the ground, but it may get into the hands of a man who is remote from your records, and the result may be disastrous to him and to you. So perhaps it is a question for you to decide whether it is wise to make an abstract which might be called a purely local abstract.

It is useless for me to attempt to go into the definition of an abstract. We all understand what it is. But the form in which the abstract comes to the attorney is of great importance to him. If we pick up an abstract, its general appearance has a great deal to do with the confidence which it inspires. In glancing it over, if we see it is put together in a sloppy manner, and the typewriting is full of errors (and I take it for granted that all abstracts are made on typewriters today), we immediately become suspicious, and we do not feel satisfied. That is one reason why I would like to impress upon you now to be careful how your work looks when it leaves your office. Do not let it look sloppy.

This brings up the question of the arrangement of an abstract. There are many ways of arranging the instruments which you take off and which you abstract. Perhaps the usual way is to arrange all instruments affecting the title chronologically. Another way is to arrange them in the order of the date of record. But at all events, which ever way you do, you ought to be systematic. I have had abstracts in my hands, in fact have one in my mind which I had not very long ago, consisting of perhaps nearly two hundred pages, without an index, and nothing consecutive—it seemed thrown together

helter-skelter. I am not referring to the one from your county, Mr. Watson. There would be old mortgages in it, and after wading through fifteen or twenty pages, we would find something that looked like a release.

Right there it seems to me is a safe departure from the chronological order in an abstract. Why is it not proper to put a release immediately after the mortgage? That is the natural order. And I would suggest that you there depart from the chronological arrangement. As I said before, you may arrange the abstract according to the dates of the instruments, or, with these little exceptions, according to the dates of the record. But there is one thing I would like to impress upon you not to do, and that is, after you have prepared all the sheets of the abstract and have abstracted every instrument and document that affects the title, to take them in your hands and shuffle them as you would a pack of cards, add a tax sheet, and then throw them into a cover, and in that shape deliver it to the attorney. It may seem impossible to some of you, but they come that way to us too often. And I must say that when I get hold of an abstract of that kind, I wish the man who made the abstract were in my presence, that I might hurl the thing at his head.

Aside from the question of arrangement of the abstract, it may be worth while to say a little something about what an abstract of an instrument or document should contain. I take it that the abstract should clearly show the legal effect of every instrument in it. If it is an abstract of an ordinary deed, any searcher usually could pass upon it. But suppose there is an unusual consideration in that deed. It may be a deed from a corporation, and there are recitals of a consideration which are invalid. I have in my mind today a case of that kind, where a deed was made by a corporation for a very peculiar consideration, and when that original deed was submitted to a well-versed attorney in San Francisco, he said "According to the decisions of the Supreme Court, that consideration is void." Supposing that deed has gone into an abstract, and the abstracter puts in the names and the date and acknowledgment, etc., and he puts in something in the way of consideration, and then adds to that "&c". The "&c" leaves out a very material part of the language. I merely mention that as an instance, in order to have you gentlemen careful, if you are not already so. If there is anything unusual, out of the ordinary, let us have it, and let us pass upon its legal effect.

I do not believe in the padding of abstracts for the sake of charging for it or for the sake of enabling attorneys to charge more for examining it. What we want to get at is the result and the facts, to that end. An abstract may contain a series of instruments, deeds. Everyone of those deeds may have an identical description. I do not think it is worth while always to repeat that description over and over again. But you might refer back to the instrument which contains the same description. The fact is a matter of judgment for

you. We do not care very much about that, one way or the other, unless it is a very long description, which necessitates a comparison with a plat.

I would like to add one word in regard to that matter of referring to an instrument in the abstract. You all know that in examining a title you are frequently obliged to refer back to something that has gone before, you have read a deed, you have read an instrument of some kind, and you want to look at it again. Without any index, how are you going to find it? Here is an abstract of two or three hundred pages, it is not arranged chronologically, in fact, it is not arranged at all, it is only a disarrangement. In order to find that instrument, you have got to wade through the whole thing, merely because you have not an index. If you had the index, you would refer to it. Not only is the index valuable in that way, gentlemen, but it is a very valuable check upon the work. We sometimes feel as if we ought to go through the index to see if everything is in the abstract itself. It may have gone through several hands. I have in mind a case in San Francisco where a man took out one of the pages of an abstract and omitted a mortgage shown therein, and the consequence was he was able to go to another party and get another loan on the same property. We are careful about those things, of course. But in regard to referring back from one instrument to another, if you do make a reference in an abstract to a preceding instrument, please do not simply say "Book so-and-so, page so-and-so", because there is nothing in the index of the abstract about "Book and page". Just say, if you please, that it is on such-and-such a page of the abstract. That will help us out a great deal. We have, indeed, to talk to our own searchers a good deal about that very thing.

I have already said something about the general appearance of the abstract, and I hope that you gentlemen who are in the abstract business will be careful to have somebody carefully read over the typewriting. We get abstracts too often where the typographical work is very bad, is full of mistakes in the figures and names. It is too often the case, simply because you have not had somebody to compare the typewriter's work with the instruments.

I have already said about as much as it is necessary to say concerning the arrangement of the abstract, but I would like to accentuate it and say that there is nothing more disgusting to the lawyer than to get one of those abstracts that has absolutely no arrangement whatever, but is just as if it came out of a shot-gun.

With regard to the form of putting an instrument abstracted into the abstract, there is but very little I need to say. You know very well that when a deed is abstracted, we want, first, the title of the instrument—if it is a deed, call it a deed, and if a mortgage, call it a mortgage—we like to have the word "Deed", the date of the acknowledgment, and the date and place of record. Those are all simple. The ordinary deed does not require any particular examina-

tion as to its validity, outside of what I have already referred to—those are enough. But when you come to the acknowledgment, that is a matter of a good deal of importance, not so much, however, as it used to be. You will remember that in times past, the Legislature of the State more than once passed what we call curative acts. You know, gentlemen, of course, that if an instrument is not acknowledged as the law requires, it is not entitled to record, and if it is on record, it is not notice to anybody, and you cannot use that record in evidence to substantiate the title. The first act that I recollect on that head was an act which provided that where an instrument was improperly executed, or the acknowledgment was invalid and not according to the form of law, nevertheless the record of such an instrument should be notice. That was good as far as it went. That would prevent one man who had sold the property from selling it to another, where the title was invalid, because the third person, buying the land, is bound by the notice of the fact that this man has already sold it to somebody else. So far so good. But it did not go far enough. The next step in the line of curative acts was a statute passed along early in the 60's, and eventually got into the Code, which provided that where there was a defective execution and bad acknowlment, not only should the record of the instrument be notice, but it also provided that the record, or a certified copy of that, might be used in evidence. But they always put in a joker, to this effect: "providing it first be shown that the instrument is genuine." That took away the whole effect of the curative act. I believe, in my own experience, I have had but one case where there was a defect of that kind, and the party happened to have the deed in his possession. Now, you see you could not use such a record as that, and if you had a defective acknowledgment there, you could not prove the title by the record, unless you first proved the genuineness of the instrument.

Fortunately, however, along about 1903, Section 1207, Civil Code, was amended in a manner that has relieved us of a great deal of difficulty in that way. The matter was taken up and discussed with one of our Code Commissioners, Mr. Freeman, and in discussing it with him, it was suggested that there should be something making those records absolutely good after a certain time. The objection raised by the Legislature was that there was danger of forgeries. I said, "What danger is there in the forgery of a deed that is thirty years or forty years old? There is not any. Make some kind of a provision, I do not care if you make it forty, or thirty, or twenty years, but some kind of a provision of that sort." The result of the whole thing was an amendment of Section 1207, Civil Code, with which, of course, you gentlemen are familiar. I take the liberty of reading a portion of it: "Any instrument affecting real "property, which was, previous to the first day of January, one "thousand nine hundred and three (now 1909), copied into the proper "book of record, kept in the office of any county recorder, imparts, "after that date, notice of its contents to subsequent purchasers and

"encumbrancers, notwithstanding any defect, omission, or informality "in the execution of the instrument, or in the certificates of ac- "knowledgment thereof, or the absence of any such certificates; "nothing herein affects the rights of purchasers or encumbrancers "previous to that date." And here is the nut of the whole thing: "Duly certified copies of the record of any such instrument may be "read in evidence with like effect as copies of an instrument duly "acknowledged and recorded; provided, when such copying in the "proper book of record occurred within fifteen years prior to the "trial of the action, it is first shown that the original instrument was "genuine."

That is, of course, plain enough. When you get to the trial of a case, and run against a record which is bad and defective, that is fifteen years old, you may absolutely disregard the defects, and that record is good evidence. I call attention to that for this reason: that any acknowledgment which you may find is bad and which perhaps would otherwise render the record void, if it is more than fifteen years old, you need not bother yourself so much about it, or even if it has not any acknowledgment at all. Is that not correct, Mr. Gates?

THE PRESIDENT: Yes.

MR. RIXFORD: That is our construction of the act.

THE PRESIDENT: And ours.

MR. RIXFORD: There is another point, however, in connection with acknowledgments, that we frequently run against in San Francisco, and perhaps you do in the country, and that is where an instrument has been executed and acknowledged in another State than in the State of California. You know under our law, an instrument is not entitled to record here unless it is acknowledged substantially according to our form—it does not require rigid compliance, but substantial compliance. But there are many States whose form does not come up to ours.

MR. VAUGHAN: Will you permit a question there? You are speaking about an acknowledgment recorded for fifteen years. What would be your attitude if it had been recorded, as a matter of fact, but the record destroyed, as were your records here in this city?

MR. RIXFORD: If the record is destroyed, you certainly cannot put it in evidence.

MR. VAUGHAN: If you have an abstract, an old abstract, that showed such a record?

MR. RIXFORD: I see the drift of your remark. My own judgment is, that if the court has secondary evidence, it would admit it, notwithstanding the defect, because it is an abstract of that record and takes the place of it. In other words, it is secondary evidence of that record.

We frequently get deeds and other instruments from other States, acknowleged according to the laws of that State. Sections 1189 of our Civil Code, as it formerly stood, after giving the purport of the certificate of acknowledgment, provided "that any such acknowledg-

"ment taken without this State in accordance with the laws of the "place where the acknowledgment is made, shall be sufficient in this "State". That was all very well. Where the law read like that, and nothing more, we were then compelled to examine the law of the State from which that certificate came, and, in examining the law of that State, if we satisfied ourselves that it was according to the law of that State, we used to pass it. Unfortunately, in 1897 a proviso was added to that section which has caused more or less discussion among the lawyers in San Francisco: "provided, however, that "any acknowledgment taken without this State in accordance with "the laws of the place where the acknowledgment is made, shall be "sufficient in this State; and provided, further, that the certificate of "the clerk of a court of record of the county or district where such "acknowledgment is taken, that the officer certifying to the same is "authorized by law so to do, and that the signature of the said officer "to said certificate is his true and genuine signature, and that such "acknowledgment is taken in accordance with the laws of the place "where the same is made, shall be *prima facie* evidence of the facts "stated in the certificate of said clerk." Our interpretation of that section is that an acknowledgment taken out of the State, not in accordance with the form of California, is bad, unless you have the certificate of the clerk right up to that article. When you have got that, there is no question about it. I call your attention to that, gentlemen, because you may run across some of those acknowledgments, and if you do, I hope you will send me the full certificate of the clerk.

Very little need be said, of course, in regard to the abstracts of suits and judgment-rolls. We would like to have you put in plain language what the cause of action is, and if there was a default, that information, and we would like to have the evidence of service of summons. Do not say. "Served; default", but let us know what the service was, how it was served, and on whom it was served. We would like to have all of that. If it is a case of where an answer is filed, let enough of the answer appear to show what the issue is in the case, and then, after that, a little abstract of the findings and the judgment is about all I should require. There may be some more put in, but I would like to see about so much.

In regard to another matter to which I alluded once before, if there is any doubt in the mind of an abstracter as to whether a clause inserted in a deed or an instrument or anything in a judgment-roll is doubtful, by all means go on the safe side and put it in the abstract. You had better err in putting too much in than too little, without adding unnecessary padding, of course.

We get a great many abstracts from the country where the parcel of land under examination is a portion of a large rancho. That is very common, indeed. Often times an abstract comes without any plats. I have adopted the plan myself of sitting down and platting. It takes a long time, and it is too much work to impose upon the

lawyer when you have before you in your own county the plats, but I have done it rather than not have them. We would like very much to have you put in enough of the plat, for instance, to show that the parcel in question is a part of the larger tract which you have mentioned before. I do not need to say much on that, as you will, of course, catch the idea.

There is another subject which is a fruitful subject in connection with the making of abstracts, and I consider it one of the most important of all, and that is the proper abstracting of probate proceedings. But I see that at 2:30 tomorrow afternoon there is an address to be delivered on the subject of "Abstract of Probate Proceedings" by Mr. Leech, of the Title Insurance and Guaranty Company, and it would not be fair for me to say anything on that subject, because I have no doubt that he will give it full and fair treatment.

I would like to add one word before closing, gentlemen, and that is this: that abstracts have very much improved in the last twenty-five or thirty-five years in San Francisco. I see gentlemen around me now who are in the business of abstracting, and who produce good abstracts, which it is a pleasure to handle. Yet there are some of the old ones left, and I hope some of them are here to hear what I say. If they are, I would like to say to them, "For Heaven's sake, don't send us any more of your abnominally slouchy abstracts". (Applause.)

MR. WATSON: I would like to qualify Mr. Rixford's statement by saying that that abstract did come from our county. We admit that it came from our county, but it was not our work.

MR. RIXFORD: I would like to say for Mr. Watson that that abstract was a bad one, but he took it up and made a new one which was first-class.

THE PRESIDENT: We have done a good many things in the South that were wrong, we have been sowing the wind down there and we are beginning to reap the whirlwind in some directions, and possibly there are others that I have not yet discovered. Our conveyancers, those who plat and subdivide property, have placed recently a great many conditions, restrictions, reservations, etc., in their deeds, and they are constructed in a manner and form that would enable them to fall down and worship them without violating any of the Commandments, because they resemble nothing on the earth or in the heavens above or the waters beneath. They represent the ingenuity of a man who has had some fantastic notion as to how he wanted his property used. In abstracting such things, we find it necessary to have the abstracter use the exact language of the conveyance, in order to place the matter properly before us. Conditions or restrictions I believe ought to be set out in full, and Mr. Rixford's injunction to set out more rather than less is one that you ought to keep in mind, in such a case. The only result or penalty which will be visited upon you for putting too much in the abstract is a kick on the price. But if you put in too little, you may be liable in damages for the omission. A good attorney wants an abstract which will enable him, as Mr. Rixford says, to gather the full import and legal effect of the instrument, and sometimes he must have almost the entire instrument, when it is abnormal or unusual in form.

Scattered Observations on the Abstract of Title

Paper by Ross E. Pierce, Secretary of Pierce-Bosquit Abstract and Title Company of Sacramento.

THE PRESIDENT: The California Land Title Association owes its existence more to the intelligent effort and the vigilant work of one man, than to any other in the State of California. That man has been active and diligent in the prosecution of the propagation of this organization, and he has done more to bring it to its present state, and has done more work to keep it going, than has any other person. I refer to our Secretary, Mr. Ross E. Pierce, who will now speak to us upon some of the questions that beset us at various times. Mr. Pierce. (Applause.)

MR. PIERCE: Mr. President and Gentlemen: While no doubt our President thought he was doing me something of a favor in paying me a compliment that I cannot say that I deserve, I feel that he has somewhat harmed me. My life work since I left school has been that of an abstracter. I have missed those opportunities and advantages that an attorney has in addressing juries and courts, and in talking hot air about his home city, and consequently I am hardly fit to make an address, especially since my work has been rather confined to office work. My wife said to me before I came down here (this is confidential, of course), "Be careful and keep a cool head. You are likely to get stage-fright". While I agreed with her, I told her that if the audience could stand it, I thought I could.

To undertake to prepare a paper to read before the abstracters of the State, assembled in a convention of this kind, does the one who undertakes it in earnestness a world of good. I have no doubt, and I say this not by way of joke, that I got more good out of my endeavors to frame something of interest and benefit to you than you will by any possibility get by listening to what I have prepared. Not being an attorney, and not having had experience in the practice of the law and in digging out legal decisions, I may have slipped up here and there in that part of my efforts. If I have, I trust that the attorneys among the Association will tell me of these mistakes, so that I may further benefit through my efforts. Possibly if they do, I will have to change the title of my paper. I have called it "Scattered Observations on the Abstract of Title". Maybe when they get through with me, I will have to call it "Shattered Observations on the Abstract of Title". (Laughter.) Sometimes I forget what I remember, and sometimes I can't think of what I forget. So I have written it down.

SCATTERED OBSERVATIONS ON THE ABSTRACT OF TITLE.

Definition.

An Abstract of Title as generally made in this State is a brief or summary showing all the important or material parts of instruments of title evidence, including liens and incumbrances, recorded in the County Recorder's office and affecting a specific piece of realty

or some particular estate therein. Likewise it includes a notice and brief of estates, suits or other proceedings and judgments which relate to or encumber said title and appear of record in the County Clerk's Office. There should also be a statement of current taxes, covering State, County, City and School, Irrigation, Drainage or other lesser district.

Ordinarily the abstracter in gathering material for his handiwork does not go out of the County Court House and Hall of Records, except it be for city taxes, city street assessments and proceedings had in connection therewith. Where patents are not of record or errors appear on the face of the County Record thereof, statements of entries from the tract books in the United States local or the State Land Office, as the case may be, are frequently and properly included in the abstract. Abstract companies having offices in counties where the Federal Court sits also certify as to judgments thereof, which constitute a lien on real property.

General Observations.

The care and thought and labor involved in the preparation of abstracts of complicated titles frequently amounts to drudgery. An Abstracter must have a nice discretion. He must know the basic principles of title law. He must be familiar with the doctrine of constructive notice. He must know something of the necessary steps in all legal proceedings which affect titles.

It is his duty to search out all the instruments, proceedings and entries which relate to titles, and after he has found them, to determine what are and what are not the operative parts thereof, in order that he may set out the one and omit the other.

Yet, he is not to produce a legal opinion as to the title. He is not to say that title of the fee vests in John Doe, subject to certain conditions or encumbrances. This duty belongs to the attorney who is to examine the abstract after it has become a finished product and left the abstracter's hand. Indeed, the abstracter must ever be on his guard to keep within the strict confines of his own business, and not tread on the examining counsel's toes by passing legal judgment on any of the matters disclosed in the search.

While the basic principle involved in the preparation of abstracts as here stated is pretty generally accepted, strange as it may seem, the abstracts as prepared by the various companies, both in this state and abroad differ widely. Recognizing this fact it has been one of the fundamental purposes of all State (and the American) Associations of Abstracters or Title Men, as expressed in their constitutions, to secure uniform methods in compiling abstracts and certifying titles.

Lack of Uniformity.

Along the Atlantic Seaboard, abstracts are as a rule little more than mere tabular index references to the documents in the chain,

following closely the long established precedent of the solicitor's abstracts in England. They do not seek to show the complete chain, but generally begin with some deed some forty or fifty years prior to date. As we come Westward the scope of the abstract with reference to the material disclosed is broader. Chicago may be called an abstract center. Some of the largest title concerns of the country are located there. It is the home of Warvelle, one of the most eminent authorities on abstracts. Another author prominent in title circles hails from there, Wm. C. Niblack. Chicago title men pride themselves on the fullness and completeness of their abstracts. Judging solely by comparisons of the copies of abstracts produced in the Great Lake Region with those of this state, I am opinioned that the forms used in the far West are fuller than those used in Chicago.

Here a complete abstract begins with the very foundation of title and seeks to include enough of the record evidence to enable the examining attorney to intelligently render an opinion therefrom, while sitting in his own office, without any recourse to the public records.

Undoubtedly this is the sort of abstract we are all seeking to make. Yet it is a fact that there are scarcely two abstract offices in this state in which the same forms, the same manner of arrangement and working up the title is employed. Prove it to your own satisfaction by seeking to find two abstracts in the exhibit of this association in which an ordinary "grant, bargain and sale" deed is abstracted in the same way. There are wide and apparently material differences in arrangement, in briefing and in condensation.

But a brief time is alloted to cover the magnitude of the subject under consideration. I desire that my observations shall be of a practical nature. They will be of the pick and shovel kind. I have dug in and picked out chunks here and little pieces there, and they will be presented to you, unpolished and rough, just as dug out.

Form. Outward Appearance.

The outward appearance and form of the abstract should be carefully considered by all engaged in the business. Utility and attractiveness should be the ends sought. There are a few abstracters who continue to put up their work judgment-roll fashion in a large bundle which is hard to handle in examination. Did you ever have the opportunity to look into a large abstract put up this way? Some are so persistent in refusing to stay open, that law books, paper weights, and flat irons may be called to use in a vain endeavor to subdue them. Abstracters are rapidly adopting the book form, which has proven satisfactory wherever tried.

Outside Cover.

Attorneys for loan and trust companies and banks, frequently have many abstracts in their offices. They appreciate the practice

followed by some offices of setting out on the outside of the front cover, a brief description of the property, title to which is disclosed within.

Caption Sheet.

The caption sheet, now almost universally used, which precedes the abstract proper always contains a description of the property under search and frequently includes additional matter such as the period covered by the search in case of continuation or partial abstracts. The caption sheet is a matter of convenience and form rather than necessity. Many abstracters dispense with it altogether, embodying in their final certificate those matters generally covered by the caption sheet. Where a caption sheet is used its purpose should be to show the extent, special incidents and period of time covered by the abstract, and to set out briefly a description of the property under search. It has become a custom almost general to show in the caption at whose request or for whose use and benefit the abstract was prepared, and when this "Made at the Request of" clause does not appear in the caption it may be found in the final certificate. This clause seems to have been handed down to us from England, where it has been used on the solicitor's abstracts. It may have some force and value there. So far as I know from the abstracters standpoint it has no value in this State. Being a declaration of interests in favor of the abstracter, it is unlikely that it could be introduced in his behalf in case of suit brought for damages resulting from an imperfect abstract, though the declaration could be used against him in establishing privity of contract. Many abstracters fondly believe, however, that the clause could be introduced by way of *prima facie* evidence in their favor, and this may be its intended purpose.

Liability of Abstracters.

It is not my intention to go into the liability of abstracters generally, but it is proper to note that the rule as expounded in most jurisdictions is that the liability depends on privity of contract between plaintiff and the abstracter; and a third party being a stranger to the contract, though he sustains damages by reason of patent errors in an abstract on which he relies, has no recourse against the abstract company. (Warvelle on Abstracts, sec. 9. Cases cited. Niblack's Abstracters, sec. 18. Cases cited. Martindale, on Abstracts. Cases cited.) While this rule of construction may be in harmony with the construction of liability under contracts in general, it is nevertheless apparent, that the rule as applied for the benefit of abstracters must in many cases work a hardship and actual injustice. In some cases it must appear that no party would have the right to recover no matter how gross and grievous the error committed by the abstracter.

It is a custom in some sections at least, for the layman to order his abstracts through attorneys, real estate men, banks, or fiscal agents. Occasionally persons anticipating the acquisition of property desire to secretly investigate the title, and so purposely conceal their identity by ordering through third parties. It is a fact that in many cases the abstracter does not know for whom the abstract is being made or for what purpose. The courts are not inclined to make an exception from the long established general rule in favor of parties not privy to the contract who are injured through defects in abstracts, but the matter could easily be reached and remedied through legislative enactment.

An abstract is more in the nature of a thing *in rem*. It should be good at all times for the purpose of showing title, for all purposes, within the dates indicated by the certificate. It should be a permanent asset to the property, passing regularly from grantor to grantee, the only necessity to its use being continuations or extensions to date from time to time.

Index.

Where an abstract is unduly long, or the interests and estates are complex, as a matter of convenience it should include an index, either immediately following the caption sheet or at the end. If the title revealed is simple and regular, the abstract is an index unto itself.

Plats.

An abstract should contain all the plats of record, which are in any way necessary or convenient in tracing the title through its various stages. In the case of an abstract of a city lot in a sub-division which was originally an irregular farm tract, there should be a plat showing the block or portion of the sub-division in which the lot abstracted is situate, together with all the essential matters of execution, acceptance and filing of the plat, followed by a plat of the irregular farm tract out of which the sub-division was carved showing its boundaries and location with reference to government or other established corners. These plats with their notes and references enable the examining counsel to follow the title and connect it up at the time the character of the property changed from farm tract to city sub-divisions. A good many abstracts are deficient in this particular. Attorneys occasionally meet with abstracts in which they find Jones deeding to Brown a farm tract, and in the very next instrument Brown conveying some city lot in a sub-division which so far as indicated by the abstract by plat or otherwise may have no connection with the property acquired by Brown. Nothing will occasion more violent and obscene language from legal lips than an omission of this kind.

Patent.

In an ordinary course of title, a patent would follow the plats. The patent can be set out thus:

"United States Patent.
to Certificate No. ——
Richard Brown.

Dated,.....
Issued under Act of Congress.....
Filed.....
Recorded.....

GRANTS
(description)

Subject, however, (here set out reservations, limitations and Exceptions), if any.

(Signed) By the President.....
(Seal) By the Secretary.....
By....., Recorder of the General Land Office.
Recorded in General Land Office at....."

Occasionally we see abstracts in which the signatures of the Government Officers are not set out. This constitutes a defect in the abstract. The law requires as a requisite to the validity of a patent that it be signed by the President, or in his name by the Secretary, and that the seal of the General Land Office be affixed, and that it be signed by the Recorder of said land office.

Deeds.

Next let us consider Deeds of conveyance, the instruments most frequently met with in examinations of title. As to parts covered or to be included in the abstract, most of the abstracters agree that the parties should be shown, the date of execution, the date of filing for record, the book and page of record, the consideration, the granting words, the description and the acknowledgment; but as to how much of these formal parts should be shown, or what arrangement of the parts should be made, there is utter lack of harmony.

A deed abstracted as follows should meet the requirements of the most critical of examiners, preserving, with few exceptions, the same order of arrangement of the parts as exists in the original. The names of the grantors and grantees should be taken letter for letter from the main body of the instrument, where they are described as parties thereto of the first and second part respectively, and not from some heading set over the record by a copyist in the Recorder's Office from some uncertain source. Immediately following this heading, in a single line paragraph form, show on first line, date of instrument; on second line, "Filed for record .....", and on third line "Recorded in Book.....".

Since we are largely dependent on copyists, the safest rule to follow in setting out the consideration, the granting words, and the estate granted is to copy the same verbatim from the instrument, beginning with the words "That the said party of the first part, for and in consideration....." and continuing down to the description. Set this out in a paragraph with double spaces between the lines.

Next paragraph and copy the description, in a compact body, using single line spacer in passing from one line to another. When this manner of setting out descriptions is followed throughout the abstract, it is an easy matter to check through it for land. If there are reservations and limitations which appear as an integral part of the description let them be included with it. If they are by way of separate clause, paragraph them, with double space between lines.

The habendum and tenendum, when merely formal and regular, need not be noticed. Warranties and special covenants should be set out in a paragraph in full. Some abstracters in noting warranties merely state in the heading "Warranty Deed", without noting the nature or purport of the Warranty. Many warranties are merely confirmatory of what is already assured under the Statute by the use of the word "grant" in the granting clause, being merely warranties against the acts of the grantor. Other warranties are absolute in their nature, covenanting that the grantor has a good and indefeasible title in fee simple absolute. There are in fact innumerable shades of warranties, and the abstracter who upon seeing the words "Warrant and Defend" in a deed rushes to the head with a mere Statement of "Warranty Deed," does not do the subject justice.

Signatures.

The signatures of the grantor should be shown letter for letter. There are some abstracts which do not show these signatures at all. In case of signature by mark, the witness or witnesses to the mark should also be set out. If the acknowledgment was taken by the witness, the name of the witness as such should be set out.

Acknowledgments.

With regard to acknowledgments, there appears on the face of their work a greater diversity of opinion among California Abstracters than on any other point involved in setting out a deed. The abstracter in Orange County sets out the acknowledgment in short form in its natural sequence at the end of the instrument; the abstracter at Solano locates it in the same places but cuts the substance down to "Ack. before John Doe, Notary Public,————Co., Cal. Seal", without date or showing as to how grantor's name appears in the Certificate; the Abstracter at Redlands copies the Acknowledgment in full and leaves it in position; at Ukiah the

acknowledgment is briefed and carried forward to the head of the instrument. We might enlarge, but suffice it to say that in this one state there are as many ways of showing the acknowledgment as it is possible for the mind of man to devise.

There is no good reason why the acknowledgment should be carried forward. If left in natural position and properly paragraphed and set off, it certainly is as easily and quickly found there as in any place it would be possible to put it.

The California Code provides first, a general form of acknowledgment; second, a form of acknowledgment for corporations, and, third, a form for attorneys in fact. Substantial compliance with these forms is a requisite to the validity of the acknowledgment. (Devlin on Deeds, Sec. 464. Cases cited.) In case of acknowledgments taken without the state, a certificate of magistracy is provided for, and the clerk in this Certificate must certify among other matters that the signature of the officer to the acknowledgment *is* genuine. (Cal. Civ. Code, Sec. 1189.) In Georgia under a like provision, where the Clerk certifies that he *believed* the signature *to be* genuine, the Court held that the Certificate was wholly insufficient. (*McKenzie* v. *Jackson*, 82 Ga. 80. Devlin on Deeds, 471a. Cases cited.) Likewise it would appear that substantial compliance with all the provisions of the Code relating to this certificate is necessary to the validity thereof.

It is true that the acknowledgment is not necessary to the validity of the Deed. An unacknowledged (like an unrecorded) deed is good between the parties and subsequent purchasers with actual notice. But an unacknowledged deed is not entitled to record and is not admissible as evidence in Court, without first being proven. The same is true of a deed in which the acknowledgment is materially defective. A deed must be legally recordable to make a record thereof constructive notice. An unacknowledged deed, or a deed having a defective acknowledgment, even though spread on the records, and properly indexed, would not afford constructive notice to subsequent investors. (Devlin on Deeds 471 a.; Warvelle on Abstracts 196. Cases cited.)

Under this rule of law an acknowledgment necessarily assumes an important aspect. The examining counsel must know, in order to be sure, that each instrument in the mesne conveyance affords constructive notice, that the acknowledgments were legally sufficient.

In California there is, it seems, ordinarily no necessity for setting out acknowledgments in full where the instrument was recorded in the proper record fifteen years or more prior to January 1, 1909. Section 1207 of the Civil Code of California, as amended by Statutes, and amendments to Codes of 1909, provides that all instruments recorded in the proper record prior to January 1, 1909, regardless of any defect in acknowledgment, or the total absence of any acknowledgment, shall afford constructive notice after that

date to subsequent investors, but said act is no bar to the rights of purchasers and encumbrancers, whose titles were recorded prior to said date. But it seems that the last clause of this act opens up the whole question for fifteen years prior to January 1, 1909. This clause reads as follows: "Duly certified copies of the record of any such instrument may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded; provided, when such copying in the proper book of record occurred within fifteen years prior to the trial of the action, it is first shown that the original instrument *was genuine*". This clause is clearly a "joker" which opens up the whole question for fifteen years so far as an examiner of titles is concerned. Few owners can produce all their original deeds affecting their titles for the requisite period. They have been lost, misplaced or destroyed. In fact, how can it be shown that the instrument "*was genuine*" unless by an acknowledgment in due form of law?

As to deeds in the mesne conveyance, and all unreleased and live mortgages, agreements, leases or other instruments, recorded subsequent to January 1, 1894, the better practise is to show acknowledgments fully enough to enable the examining counsel to say that they are legal in form and afford constructive notice. Full copies are preferable for this purpose.

Released Mortages.

When a mortgage has been released, or the terms of a lease, agreement or other instrument have died by running of time, the acknowledgment is no longer of moment and may be shown in short form, thus:

"Acknowledged by John Doe, March 1, 1908, before Fred Williams, a Notary Public, El Dorado Co., Cal. (Seal)."

The only material part of a released mortgage is the release. The instrument itself may be shown very briefly. The release, if marginal, should be shown verbatim, and if a separate instrument, fully enough to enable the examining counsel to say it is executed in proper form.

The above observations regarding a released or satisfied mortgage are an underlying principle of the business, which may be applied in case of bonds for deeds, options and all classes of agreements and other instruments which are no longer in vital force and effect by reason of lapse in time or some duly executed release.

Unsatisfied Mortgage.

In so far as applicable the same rules laid down for a deed will be regarded in abstracting an unsatisfied mortgage. In addition set out the terms and provisions of the note, which usually appear in full in the mortgage. Also note briefly the manner provided for foreclosure and sale in case of default. This latter matter should

also be noted in case of foreclosed mortgages, to enable the examiner to determine that the sale was as provided in the mortgage.

Articles of Incorporation.

In some of the abstracts prepared in this State in case of Real Estate, Mining, Power, Timber or Mercantile companies, who come into the title by mesne conveyance, the abstracter in noting the articles of incorporation of said company, merely states, "Articles of ———— Company were filed in the County Clerk's Office of ————County, ———— (date)." I have not gone into the legal phase of this matter to any extent. Applying a general knowledge, however, the above seems insufficient and lax. The articles should be formally set out. The following particulars should be shown. (1) Name of Company. (2) Under laws of what state, incorporated. (3) Date of incorporation. (4) Term of existence. (5) Principal place of business. (6) Enough of the purposes to indicate that the Company may deal in real estate, and (7) Endorsements of filing in County Clerk's Office, where originally filed, and Secretary of State's Office, and in county where abstract is being made.

Where corporations are parties to deeds, the full description of the Corporations as parties should be set out. Some abstracters give the bare name of the Corporation. In case of an abstract of mining properties, we recently made in El Dorado County, we had two Corporations appear at different times in the chain of title, whose bare names were exactly the same, but one was described as being organized and existing under the laws of West Virginia, while the second was a New Jersey Corporation. In abstracting a slate quarry property, one company was described as Eureka Slate Company, while its immediate successor was described as The Eureka Slate Company, both being incorporated under the laws of this state.

A certain corporation became the owner by purchase in the year 1860 of one of the patented copper mines in El Dorado County. The articles of this company drafted in pursuance of the laws of California, were dated June 27th, 1860, and contained this recital: "Said Company is to exist forty years," and yet it appears of record that this company did not convey the property referred to until May 3rd, 1902, by deed of that date, filed for record November 3, 1903, about forty-two years after the date of its incorporation. It is not within my province as an abstracter of titles to state that that deed either is or is not valid, but it is an abstracter's duty to formally set out the deed and to formally set out the articles of incorporation as above suggested, in order that the examining counsel may affirmatively be shown: (1) That the company's articles of incorporation are correctly drawn. (2) That it included among its powers the right to deal in the class of real estate abstracted.

(3) That the term for which the company was incorporated has not expired, prior to date of execution of its deed, and (4) That the articles are correctly filed in the proper offices.

Tax Statement.

Not having the time to consider the many other intermediate matters I would like to touch upon, I pass to the Statement of taxes. This Statement may be shown either as a separate matter or as a part of the final certificate. It should cover all the taxes and assessments that constitute liens on the property. Some abstracters seem lazy in this respect. They except certain taxes which are shown on records kept in the city where they are engaged in business. They will state "No search as to Water Taxes," "No search as to Irrigation District Taxes," "No search as to Drainage District Taxes," when the records of these matters are kept with the County Treasurer, County Tax Collector or some of the City Officers. Can you maintain, gentlemen, that after a party has paid for his search, that it is his duty to hire an attorney or go personally and investigate these taxes? Not only this, but in many cases the abstracter in stating taxes uses the following form: "Taxes for 1908 are now a lien, State and County." That is insufficient. Set out the taxes formally, show to whom assessed, volume and page of roll, and the amount due. If the description is poor and irregular, it does no harm to set it out also just as it appears on the roll. The attorney may in that case desire to have it reformed for next year's assessment, for as is well known tax rolls sometimes play an important part in suits to quiet title.

Final Certificate.

The final certificate should be businesslike and explicit. While the usual general form of certificate stating "that the foregoing is a full, true and correct abstract memoranda of all matters of record in the several county offices affecting the title" to certain property is undoubtedly sufficient and as good and binding as any that may be devised, yet, a certificate that is explicit and enumerates the most important of the instruments and proceedings, and includes a general clause as to all not so enumerated, lends a weight and dignity to the execution of the abstract that is wanting under the general form certificate.

In many of the Eastern States and the States of the Middle West, it has long been the custom of the abstracter to set out before the final certificate as part or reference thereto a statement in this form:

No other patents.
No other deeds.
No other mortgages.
No homesteads.

No other liens.

No lis pendens,

— and so on, enumerating all the important instruments. We sometimes see abstracts prepared in the West in which this practise has been adopted.

Perhaps sentiment often touches us in the routine drudgery of our porfession. However that may be, I am attached to the final certificate used by the company with which I am connected. If called upon to do so, I perhaps could not furnish satisfactory reasons as to why I prefer it above all others I have yet seen.

The certificate ordinarily reads as follows:

"State of California, } ss. The Pierce-Bosquit Abstract & Title Co."
County of El Dorado. }

hereby certifies that the foregoing one hundred (100) pages, consecutively numbered from 1 to 100 inclusive, contain a full, true and correct abstract of all patents, deeds, mortgages, assignments, releases, bonds, agreements, liens, miscellaneous records, homesteads, court decrees, powers of attorney, lis pendens, attachments, executions, transcripts of judgments, certificates of sale or other instruments in witing on file or of record in the County Recorder's Office of said County, purporting to affect the title to all that certain lot, piece or parcel of land, situate, lying and being in the County of El Dorado, State of California, particularly described as follows, to wit:

(DESCRIPTION.)

Further, said foregoing pages also contain a full, true and correct notice and brief of all estates, suits, judgments docketed or other proceedings or entries on file or of record in the County Clerk's Office of said County tending to affect the title to said within abstracted realty.

Dated February 5th, 1909, at 12 o'clock M.

(SEAL.) PIERCE-BOSQUIT ABSTRACT & TITLE CO.

By

Manager of the El Dorado County Office.

This certificate modified to meet the needs arising under the various special cases should stand the test at all times.

MR. RIXFORD: Mr. President, I wish to congratulate Mr. Pierce on the admirable address he has given us. It is very complete and very satisfactory.

THE PRESIDENT: Are there any questions, gentlemen, that you wish to ask Mr. Pierce at this time?

THE SECRETARY: Mr. Gates is bound he is going to have that title read "Shattered," instead of "Scattered."

THE PRESIDENT: No. I think from the careful compilation of Mr. Pierce's scattered remarks that no question will be able to shatter him, because he has so clearly grasped the niceties of a title abstract as seen by an examining attorney, that I am speaking from

experience when I say that he seems to know exactly what is wanted, because what Mr. Rixford has said, Mr. Pierce has accentuated, that the attorney who goes to examine an abstract must have the whole record before him. He must know exactly what that record is, and without it, he is groping in the dark. Are there any questions to be asked of Mr. Pierce?

MR. RIXFORD: Mr. President, I do not wish to ask a question of Mr. Pierce, but there is something that I omitted to say anything about in my paper, and I think it may be well to call attention to the fact. We know that frequently we are called upon to examine titles by lot numbers and block numbers in some new subdivision of a county, or some tract adjacent to a city. You are aware of the fact, gentlemen, that the Legislature of 1907 adopted a very stringent law with regard to the form of these maps of subdivisions. It is very elaborate. It seems to me that whenever you give us a map covering any kind of subdivisions, that you should be careful to show that that map contains all the certificates that the act requires. We have had a great deal of trouble over that, and even under the old law I have been obliged to reject a good many titles because the map was not acknowledged and was not certified. We have now become so careful that most of the people who subdivide lands in this neighborhood come to us and submit the map to us and go over it carefully before it is filed. It is a very important matter. It may be that if a map did not comply with the law, you could not use it to prove your title, unless there was a description by metes and bounds and a tie somewhere so you could locate it.

THE PRESIDENT: That was held by one of our Superior Courts in Los Angeles County recently.

MR. RIXFORD: It has been held so here, and it seems to me that it must be so held.

THE PRESIDENT: We are acquiescing in that as the law, Judge Wilbur held so in a suit wherein that matter arose. It would have to be abstracted so as to show that the certificates affixed to the map are in accordance with the law, else the examining attorney is unable to determine whether the map is valid or invalid, and must necessarily return the abstract for that correction.

Some Incidents of Title Insurance

By Mr. B. S. Wilkins, Associate Counsel of the California Title Insurance and Trust Company of San Francisco.

THE PRESIDENT: We discussed here yesterday at some length, and we have discussed at the various conventions that have met in the North and in the East and elsewhere that I have attended, the subject of title insurance, and the subject of title certificates. Just a moment ago, Mr. Vaughn presented me a problem in one of the abstracts presented here, and my mind immediately reverted to the problem as to whether the proceedings to which he attracted my attention were legal or not. That is the first action of the mind of an attorney, or a title insurance company or a title certificate company. We are fortunate in having with us this morning Mr. B. S. Wilkins, associate counsel of the California Title Insurance and Trust Company of this city, who will speak to us of "Some of the Incidents of Title Insurance," and I assure you from some knowledge of that that there are many incidents connected with that

insurance, and I doubt not that you will be very glad to hear from Mr. Wilkins and that he will be able to tell us about some things that we have not thought about ourselves. Mr. Wilkins. (Applause.)

MR. WILKINS: Mr. President and Gentlemen of the Association: I scarce hope to be able to say anything new to you, gentlemen. Yet, notwithstanding that, it seems to me well for one who is connected with the business to show an interest in it and to mingle with others and learn what he can, and speak of the business even at the risk of rehashing what they know. So I shall beg your indulgence while I advert briefly to some of the things that occur in title insurance.

Of course, the main object of title insurance is the indemnity of the assured against loss. That is the whole nut of the situation. That is the grand motive which builds up this business; it is what the insured wants, it is what makes title insurance popular, and without which, of course, all the other things would be of no avail, would be useless of discussion, in reference to this particular business.

We must not minimize that one thing, the indemnity against loss to the assured. That should always be kept right in view. It is not my purpose, however, to discuss that, but rather to discuss some of the incidents of title insurance.

Of course, incident to this mode of insuring titles and protecting the assured is the subject of earning an honest living for the insurer, but that was not one of the incidents I was going to talk about.

One of those incidents which we find, I believe, in all title insurance companies, is that the title insurance policy combines not only the element of the business of the abstracter, but also that of legal adviser to the insurer. The title insurer occupies a three-fold position. As the foundation of title insurance, the first thing they have to do with is the abstract. That is something that has been very fully discussed by others, and will be later discussed, and I will not go into it at all. I just want to say that the abstract is the manifestation of the title. The records, it is true, are the title, or, more correctly speaking, the evidence of the title; but the abstract is the thing that the insurer puts before his attorney for examination.

In life insurance, the subject of life insurance comes into the medical examiner's office and is already constructed, and he submits his heart and lungs and himself generally to the examination of the insurer's physician. Before we get to that point in title insurance, there is the preliminary work, the abstract of title work, supplemented by a plant. When we have that much, we have simply got to the point where the live subject will come into the medical examiner's office. At this point, also, these records, public records, are not available for examination by the attorney—it has to be in the form of an abstract. In connection with this abstract, these title companies all have their plants. That plant is a sort of a

compromise position or middle position, because the title company cannot keep a complete abstract of every piece of property within its field of business made up to date, since it would involve an enormous expense. Neither can it afford to wait until somebody comes in for title insurance before it makes up a complete abstract for a given piece of property. Consequently, it has a plant, which consists in a large part of abstracts already made up, some in the course of business, where application is made for insurance, and some of tracts and basic titles all over the district. Supplementary to these abstracts, it has references and data to keep up, books by which they can speedily continue down an abstract, which has already been made, by which it can speedily construct a new abstract on other property. This plant is something that is constantly developing and enlarging by the addition of other material. The company must have the material with which it can make up an abstract to submit to its attorney. And the fact of maintaining this plant and these data that it gets together is an element of saving time to the real estate agent, to the buyer, and to the seller, in their transactions relative to the sale or encumbrance of real estate.

Next will come the examination by the attorney of this abstract. The examination, from the nature of the insurance, will usually take much more time than the physician will have to give to the subject of life insurance. It is a more complex and more detailed matter, and presents more facts. There, too, time is consumed. In title insurance companies, these attorneys make a report. There we come to another point, because when an attorney once makes a report and that property is sold again and the matter comes before the same insurance company, the attorney who examined that does not have to go back to bedrock and go all over the subject again, as does an outside attorney, but he can rely on that former opinion, generally speaking, and generally speaking, save that time, for that point is where he starts. These opinions are incorporated in the plant, and are attached to the abstract in each case, and there is another time-saver. The attorney who once examines the title, or the attorney who comes to an examination of it after an examination by an attorney whom he is authorized to accept, can turn out his opinion of the continuation very quickly and safely. Those opinions, by the way, are not long-winded legal discussions. They are not like Supreme Court decisions. They do not have citations. They are simply brief statements of the condition of the title and upon which the attorney recommends that insurance follow. They very rarely contain more than half a page, simply setting forth the propriety of issuing the policy of insurance, or, if the attorney thinks there is something that needs attention, or any other matter, he disposes of it in very brief form, and if the matter comes up for consideration, that is done orally with those interested.

That brings me to another point in title insurance. As soon as

the attorney for the title insurance company raises an objection to the title, he has the owner, the real estate agent, and perhaps the attorney who examines the title for the owner, or the attorney who has conducted the foreclosure suit or probate proceedings, on his back right away, and he has to deal with them. There is a case where an attorney should cultivate, if he has not it already, a steady purpose to protect the applicant who is to be the policyholder; he must not sacrifice his rights, and yet he must be broad-minded; he must not be afraid of shadows, for if he does, he will reject every title that comes to him, and get everybody so disgusted that they will all come under this element of unrest that the President has spoken of here, and want something different.

It is a very disagreeable task that is before us in that connection. Your friends come in, and they may have conducted somewhat ragged and jagged proceedings, and you have to tell them so, kindly but firmly. At other times, you have to "sort of" let things slide. There again is another point in title insurance. Here in this city, I do not know how it is in others, but perhaps so in others, occasionally a compromise is effected in this way: We come across a title which is probably good enough in a way. We know the base is good; we know that the taxes have been paid and people have paid their money for it, and it has been recognized and banks have loaned money in it. And yet there is some little flaw in that title. We sometimes say, to help the real estate agent and owner out of it, "We don't want to block this sale if we can help it. Your purchaser does not want what he thinks is a bad title, and does not want an exception in his insurance policy. We will do this much for you, with the consent of the assured: This is a preliminary point, and we are willing to take the risk of it. But if the seller will leave us a sufficient amount of money to cover the possible expense of a formal suit to quiet title, or to bring up old probate proceedings, or to terminate a homestead, we will take that risk and issue a clear title. But you should go ahead and clear up that defect right away, as soon as you can." In a question of that kind, while it is done, though not often done, to help them out, of course there yet remains some little element of risk. But with wise precautions, it is a fairly safe proposition, and I do not know in my experience where any company has ever suffered a bit of loss by holding money against some of these little objections in that way. I think this plan keeps the real estate agents and sellers a little bit better-natured, and perhaps even the buyer. The buyer sometimes, when he thinks the defect is not serious, while he wants absolute protection against any pecuniary loss, yet when he is simply getting a good buy he would a little rather take that risk and take his purchase, especially if he has got the property contracted for to somebody else already at a profit. On the other hand, we get the reverse of this. We have insured a title which we think is good. Our policyholder goes to sell

the property, and some other attorney finds the title bad, and so advises his client. The policyholder comes right back to the title company and wants to know what is the matter. We cannot insure and do not that the title is above criticism. All we can insure is that the title is good. And if, upon re-examination, after considering the objections, we are satisfied that that title is good, of course we are entitled to stand on the policy and say, "That is a good title, and you can sue this purchaser for specific performance and make him pay you." Perhaps they do not want to do that, and the sale falls through and they feel sore and offended. There is a case that requires tactful and firm handling. You must treat the policyholder most courteously, and sometimes I think it is even good, sound business policy to cure a title that can be criticized, rather than have your policyholder feel too sore about it. At the same time, you cannot simply pay a loss and admit a loss every time some attorney criticizes your title. There is a case where the loss is not such a certain and definite thingas in fire insurance and life insurance. The death in one case and damage by fire in the other, is generally a matter susceptible of physical proof; while in titles, it is generally a matter of opinion. So this is a case where you are more or less in hot water between the two contending factions.

Another incident of this business is losses. Naturally there will be some loss. But the title insurance business is different from life insurance or fire insurance. In the other two classes of insurance, people expect large percentages of loss. The business is built up on that, and they not only pay losses and large losses, but they advertise the fact as one of their greatest reasons for getting business, that they pay losses and have paid so many millions of dollars in losses to policyholders. Title insurance, on the other hand, has to be a little bit different from that. While the title insurance company must not try to avoid losses that have occurred, at the same time its object is to prevent losses, to handle its transactions with such care, or try to, as to prevent many losses. And, naturally, there the interest of the assured and the title company are identical. The fact that the insurance company is trying to protect itself is an additional guaranty that they are protecting him, because their interests are identical with his. Consequently, at the low rate of premiums that is charged and considering the cost of the plant, the labor cost that goes into the title policy, they could not pay losses like the other insurance companies. If the percentage of losses were so great, they could not do it. It is a different proposition. But when a loss is admitted, when, with all the care of the insurer, the selection of his agents, of his attorneys, and the care of his plant, he has incurred a loss, it seems to me it is the wisest policy in the world and the only just policy to promptly and cheerfully meet that loss. It is the only way to meet the proposition, because the insured is paid what he is entitled to. You may hurt somebody's feelings

if you do, of course: I speak of feelings, because it is this way: In life insurance, a loss is occasioned, we will say, by other people generally or by act of God. In fire insurance, a loss is occasioned by destruction of the building by accidental fire, or by somebody entirely unconnected with the insurer. While in title insurance the trouble usually arises from the act or omission of the insurer himself, or his agents or employees. The company must not consider its own employees there—they have nothing to do with the policyholder—the company is the party to whom the policyholder looks, and it must cheerfully and fairly pay that loss and keep people in good humor and so add to its own business and justify its existence.

I thank you very much, gentlemen. (Applause.)

THE PRESIDENT: Mr. Wilkins has outlined some of the incidents, mostly troubles and difficulties, that beset the title insurer in the course of his work. The matter is now open for questions of Mr. Wilkins, or for discussion in any manner that you may desire to approach it.

MR. VAUGHAN: One point that occurred to me while Mr. Wilkins was making his talk, is another difference in the position of the Title Insurance Company and that of the Fire or Life Insurance Company, which is that sometimes the title insurer gets into a position to get his money back by taking an assignment of the rights of the insured.

MR. WILKINS: That is true, yes.

MR. VAUGHAN: To what extent is it true and how is it accomplished?

MR. WILKINS: That depends, of course, somewhat upon the value of the property. For instance, I know of one case where a judgment had gone wrong, and that became a lien on the property that the title company had insured. The attorney for the judgment creditor swooped down upon this particular piece of property. In that case the Title Insurance Company took an assignment of that judgment, did not go and pay it, but took an assignment of it, and we were lucky enough to find that this property owner had other property, and the judgment was satisfied out of that property and the company made good. In the same way with mortgages, or other liens, depending upon the value of the property, they sometimes take an assignment of the mortgage or contract, and are in a position to reimburse themselves some time, or make themselves whole.

MR. VAUGHAN: We had a case in our country, where we took an assignment of a judgment and filed our claim against the bankrupt estate. But we did not hesitate to pay the amount of the judgment.

THE PRESIDENT: I believe the right of subrogation is reserved in every title insurance policy, the right to be subrogated to the rights of the insured in all cases. As Mr. Wilkins has very satisfactorily explained, that is one of the things that we are obliged to resort to at times. But what he said about the prompt and cheerful payment of losses is especially applicable. I believe, gentlemen, that that is a maxim that can be observed by all of us: When there is a loss, pay it cheerfully and readily, if you can. If not, do the next best thing, whatever that may be, under the circumstances.

Adding to what Mr. Wilkins has stated, that when some other

company or an attorney who has examined the title comes back and says, "Your policy is wrong. This title is not marketable," that is an incident to title insurance that we all of us must understand and experience. Sometimes it well nigh amounts to tragedy. Your company has certified the title to be good, and the purchaser will refuse to take it. That sometimes arises from captious criticism upon the part of opposing companies, or upon the part of the counsel who have examined the abstract outside. In Los Angeles we have little trouble from the counsel who examine, because counsel do not examine there. But we do have other companies, and I may say that if one of the other companies can find that our company has made a mistake, I have never noticed any particular modesty in their proclaiming the fact—they usually seem to take delight in proclaiming it from the housetops and otherwise. But if a loss is a loss, pay it as quickly as possible, pay it as an insurance company of any other sort would.

This insurance, as Mr. Wilkins has very clearly pointed out, is a little different from any other kind. Fire and life insurance is an insurance for the future; title insurance is insurance of the past, and in title insurance loss occurs by reason of the insurer making some mistake. By the exercise of proper care and superhuman sagacity, which are supposed to be possessed by all title men, you can reduce your losses to the veriest minimum. Still there are losses, and the best advertisement possible is to pay the losses when the company is satisfied that a mistake for which it is liable has occurred. We prefer to be victimized, rather than to contest a loss which apparently was a valid loss and one that we should pay. Are there any other remarks?

MR. TAYLOR: The only thing that was not perfectly clear to me in Mr. Wilkins' very good statement of this matter, and to which the president has just referred also, is the recognition or even discussion of criticisms which may come to you from attorneys or opposing companies regarding the title which you have insured. Title insurance is a very interesting subject to me, something I have had no direct connection with and know even less about than I do about some other features of the title business. Hence I have much to learn concerning it, so that I was very much interested in Mr. Wilkins' address. But it seems to me that the company having issued a policy of this kind, if some attorney comes back with the policy and having gone into the details of the title, finds some defect there which might very naturally exist, even though the policy were issued, or if some competing company should do the same thing, that the position of the insurer would be something like this: "You are perfectly welcome to make your criticisms, but they are nevertheless wholly irrelevant and immaterial to the proposition in hand, because we have said the title is good, and we are financially able to defend the fact and take exactly the position of a person who has given a warranty deed. When you are attacked and dispossessed, we will take care of you, and not before." Is there, Mr. Wilkins, any distinction between that and the position your company really takes in the case of those criticisms?

MR. WILKINS: No. I will say that in the main that is the position we are forced to take. The only thing we do is that we of course try to explain to the policy holder that we have examined the points presented, and we are advised that they are not tenable, that the objections are not good; that we have considered them ourselves, and differ with them; that while it is a

matter subject to criticism, as there are matters subject to criticism in all titles, the criticism is not well founded, and we are perfectly satisfied to defend the title. At the same time, when things get to a point where the sale is complicated, I don't think it occurs very often, but I have known the company to cure defects rather than offend the policy holder. But you cannot do that habitually, because you would be putting up money all the time on every quibble that any attorney might raise, and many of them are utterly unfounded objections. I do not by that mean to say that there is no ground whatever for their criticism or objection, as there may be some. But it is not an objection that is legally sufficient to overcome the validity of the title. It might almost be said that one never saw a perfect title, because in almost every abstract or chain of title that one examines, he finds something that he could wish was not there and that he could criticize, and any attorney could do the same. But pursuing the matter down to what is a legal title, and a consideration of what are really valid objections against the legal title of the policy holder, is entirely a different thing. Illustrating the point, the other day I noted a case where a couple of laymen and three attorneys were present, and one of the laymen said, "Let's go out and let the attorneys get together", to which one of the attorneys said, "There are three attorneys here—we will never get together". (Laughter.)

THE PRESIDENT: When a policy or certificate is questioned, that is of course one of the anxious moments to the man who has insured or certified the title. The first thing he looks into is to find out whether he actually had seen that point—though he does not admit that, but rather always says, "That is a matter that we took into consideration when we made this certificate." The next thing is to find out whether he made a mistake in the original instance, always assuring the customer that it is all right. But you make some prayerful inquiries into it, and then consult the Board of Directors afterwards. But you are always obliged to make the title good to the man you have certified to. In our experience we have noted that one or two instances of mistakes that should not have been overlooked have occurred. In, I think, two instances we have been obliged to say to the owner of the property, "Very well. This man refuses to take your title. Under the circumstances, if you want to make that sale, we will buy it of you at the same figure at which he was to take it." We then took it, and in both instances we made a very handsome profit by selling the property later. They were certain defects that rendered the title unmarketable, but they were defects which could easily have been cleared up, and in both the cases the purchaser wanted to get out of his bargain anyway, and we took the property, cleared up the defects in a very short time, and in each case made a very handsome profit on the sale of the property. That kind of treatment of a customer will establish you in his good graces, and in the good graces of others who want to do business in your line.

MR. VAUGHAN: There is another class of certificates by which that difficulty could be obviated. To give an example, our firm was called upon to examine a title in Little Rock of some property that was about to be sold, and, on looking over the abstract, we borrowed an abstract from a Trust Company, a very careful company that had had a loan on the property. In looking over the abstract, we found that back some distance there was a transfer from one of our men, Mr. Joseph W. Martin, whom we knew to be

a married man, though his wife was insane. He was dead, and there was very clearly an undisposed of dower right, and it was very difficult to handle. I was surprised that the Trust Company should pass over an error like that, and the trust officer was very much surprised, too. He said, "You come back here in about an hour, and I will look into that." They had a $4,000 loan upon the property. When I came back a few hours later, and they had a very nice way out of the difficulty, the trust officer saying, "We find the security is ample to take out the dower and still leave us amply secured."

THE PRESIDENT: Mr. Vaughan's suggestion reminds me of what is one of the fruitful sources of defects of title not being discovered. A man who has obtained a loan upon his property from a bank offers the property for sale a year or two later, and the purchaser will sometimes take the title because they will say, "The German Savings and Loan Society made a loan on that property, and it must be a good title, or they never would have loaned on it. So I will take the title in that way." The property may have been perfectly good for the amount of the loan, and yet there may be a question as to an outstanding one-third interest. The bank might know that, and yet say that the security was ample for the loan and that they would ignore it entirely, and well knowing that if a larger loan were asked they would raise the question. So it is deceptive and fruitful of many disasters, to accept a title simply because somebody else has accepted it, especially in the case of a mortgage loan.

How an Abstracters' Association in California Impresses a Man from Arkansas

Address by Mr. Geo. Vaughan of Little Rock, Arkansas.

THE PRESIDENT: At the meeting of the National Association at Des Moines last year, the city of Little Rock, Arkansas, was represented by Mr. Vaughan, one of the prominent abstracters and title men of the South. He has honored us with his presence here today, and has listened, I know, with interest to all that has been said. I take pleasure in introducing him to you, and asking him to talk to you for a few moments on how an abstracters' association in California impresses a man from Arkansas. (Applause.)

MR. VAUGHAN: Mr. President, it is entirely unexpected that I should be called upon, though I have listened with great interest to the addresses that have been made this afternoon, and I must say that I am captivated with the enthusiasm and progress made in the matter of investigating land titles in this State, and also with this organization. I want to say that the proceedings of the first meeting of this California Land Title Association fell into my hands, through the courtesy of Mr. Pierce, two years ago, and so impressed me with

its excellence and the value of the papers contained in it and the proposition as a whole, that I individually took it upon myself to work up a like interest in Arkansas, resulting in the formation of the Arkansas Land Title Association. And when they say that imitation is the sincerest flattery, I know that you will understand that I appreciate the organization here in name as well as in reality, by telling you that we named our association the Arkansas Land Title Association, and that there are about twenty-two other organizations throughout the country of similar nature, and Arkansas and California are the only ones that have identical titles except for the State name.

Here is a little pamphlet that was issued for the purpose of enlightening the delegates of the American Association of Title Men throughout the country, and it is entitled, "Whose Who Among the Organized Title Men". I gave nearly all the copies I had out in Seattle, but I have five or six left, and those who are interested are welcome to them.

I was particularly impressed today with the remarks of Mr. Rixford. It reminded me of a paper by Mr. John Fletcher, one of the recognized leaders of the Little Rock bar, at our first meeting last year. I think we younger men in the profession of abstracting should take counsel of what comes from the ripe experience of the older men, who have run the gauntlet and have seen the abstract raised up from a mere epitome of the record to a perfect transcript of the record, as it should be in every case.

I was also very much impressed with Mr. Pierce's paper, which showed elaborate preparation. I think Mr. Pierce spoke of the two Chicago authors on the subject of abstracts, and I take it that there is an indication that the West promises to produce an author who will add a great deal of value upon the question of abstracting, in the person of your secretary.

I want to say, too, that the general trend of the profession all over the country is indubitably in the direction that Mr. Gates has indicated in his address today, and that is, that the public is demanding something that they can understand better and that can be delivered to them with greater speed and dispatch. And I have come to the conclusion from my own research, and have been confirmed in that conclusion since being at the meetings at Des Moines, Seattle, and this meeting, as well as the meeting of the Washington State Association and other associations of title men that I have had the pleasure of attending, that the certificate plan is the coming method of title assurance—and when I say that, I mean in the broad sense, embracing also title insurance. To use the slogan of Mr. Gates, I don't think it will be improved upon in years to come; it is a finished product. This appeals to me particularly, because I see in it a way to reach the public in a way that they can understand. The public, however uninterested in the technicalities of land titles

and the intricacies of the work of that profession, can readily understand what you mean when you say you will give him a policy of title insurance the same as his fire policy, a policy which will insure him against loss just as his fire policy does. Furthermore, he is not taking two bites at one cherry; he is getting the absolute protection that he thinks he gets and that he seeks and has sought hitherto. My particular hobby along this line is in getting the public to understand what we are driving at, and in convincing the public that we are joining hands with them in trying to produce a better policy. And right along that line was the talk I gave the American Association in the use of printer's ink in abstracting. That was gotten up rather with the idea of convincing the public of what an abstract was for, and getting the public to invest in an abstract. What I said then, and have said in every other place where I have been, along that line, applies more particularly and has a greater application to this idea of informing the public as to the nature of a certificate or policy of insurance. Then you are getting down to something that they can understand, and something that they can appreciate. In my opinion, we can only reach them by a certain systematic campaign of education. It may be accomplished in different ways. But in the last analysis, our greatest success and final triumph in the business and profession of insuring titles, will come when we can get the public, the customer, the layman, to understand just exactly what it is we produce, and to understand that it is something that he needs and that he is not safe and that it is not prudent or wise for him to acquire property without that protection, and let him come to our plant, our abstract office, and ask for the finished product, a certificate or policy of insurance, knowing what he will get. (Applause.)

Inheritance Tax Liens on Real Estate

Address by Mr. Robert A. Waring, Inheritance Tax Deputy, Controller's Office.

THE PRESIDENT: I doubt not that one of the most important and interesting subjects that will come before this convention will be a discussion of inheritance tax liens on real estate. Our State, in common with many of the other States of the Union, has an inheritance tax law—sometimes erroneously spoken of as a collateral inheritance tax law; at one time that was a proper designation, but it is at the present time an inheritance tax law. It is a law that has been the occasion of considerable misunderstanding—sometimes misinterpretation—and the subject is one upon which a great many people have applied themselves in studied endeavor in the direction

of avoidance. The inheritance tax is the only tax that is not paid by anybody. It is related of Commodore Vanderbilt's fortune, that the day after his death two of his cronies met, and one of them said, "Well, the old man is gone". "He is", was the reply. "How much did he leave"? and the other, leaning over, said, "He left every damn cent". The inheritance of property being entirely within the control of the States, the tax is paid by the man who has left the property. The heir does not receive it until all of the expenses have been taken out. So I have been pleased to look upon it as one of the easiest burdens that can be borne, because it is not borne by anybody. The heir does not receive it, because the law denies him the right to it as property, and the dead man cannot take it with him, because there are no pockets in the shroud. We shall be very glad to hear from Mr. Robert A. Waring upon this subject, and I now have the pleasure of introducing to you Mr. Waring. (Applause.)

MR. WARING: I want to thank you Mr. President for your very happy introduction, and I am very sorry that I have been unable to prepare a paper, or a talk, commensurate with the importance of the subject. When I received the invitation to address you I was about to leave for Ventura, where we had before us a matter that concerned the second largest tax to be paid in the history of our State Inheritance Tax Law. We may mutually benefit however, by a mere discussion of the various phases of the inheritance tax law, a law which very vitally concerns you.

I assume the subject is quite new to most—if not all—of you; it is new to me; it is in many respects a new institution. Within the last few years there has been a very wide-spread enactment of succession, or inheritance tax laws, in the United States; in the British Colonies; in Europe; in fact, in most of the civilized nations of the world. While such tax has had a very rapid recent growth, yet the inheritance tax idea is not new. You know, we of this world, and especially the academic of us, have a great fashion of asserting that there is no new thing under the sun. If a brilliant conversationalist attempts to expatiate on the wonders of modern dentistry and the invention of amalgam filling, some scholarly critic is sure to relate how it is set forth on a certain hieroglyphic that some Ptolemy complained of a defective filling, or how a certain mummy was found with a gold plug skillfully imbedded in a bicuspid; and the wonders of aviation are discounted by the story of Daedalus, who, with wings of wax, wandered too near the sun.

The inheritance tax law, if not modern, has at any rate a wonderful recent growth. Our State enacted its first law in 1893. This law was collateral and remained so until 1905, when it was changed to apply to direct as well as collateral heirs.

The change from a strictly collateral tax to one that applies to direct as well as collateral heirs has given the law a much wider application. This is so because property descends more often to direct than to collateral heirs. Also, the change has made the law more

difficult to enforce; there being more temptation to evade the law where the tax applies to direct than where it was confined to collateral heirs.

Permit me here to read that part of the Law of 1905 (the law now in operation), which particularly concerns those of your calling:

"All property which shall pass, by will or by the intestate laws "of this State, from any person who may die seized or possessed "of the same while a resident of this State, or if such decedent was "not a resident of this State at the time of death, which property, "or any part thereof, shall be within this State, or any interest there- "in, or income therefrom, which shall be transferred by deed, grant, "sale, or gift, made in contemplation of the death of the grantor, "vendor or bargainor, or intended to take effect in possession or "enjoyment after such death, to any person or persons, or to any "body politic or corporate, in trust or otherwise, or by reason "whereof any person or body politic or corporate shall become bene- "ficially entitled, in possession or expectancy, to any property, or to "the income thereof, shall be and is subject to a tax hereinafter "provided for, to be paid to the treasurer of the proper county, as "hereinafter directed, for the use of the State; and such tax shall "be and remain a lien upon the property passed or transferred until "paid and the person to whom the property passes or is trans- "ferred and all administrators, executors, and trustees of every es- "tate so transferred or passed shall be liable for any and all such "taxes until the same shall have been paid as hereinafter directed".

Notice that not only property which goes through probate, but also that which passes by deed or gift in contemplation of death or intended to take effect in possession or enjoyment after death is taxable; also that the tax remains a lien until paid. These provisions are very important, for, without them, the inheritance tax law could be made almost inoperative.

It is interesting to know that not only is the inheritance tax not new, but neither is the evasion of it, for an Egyptian papyrus

records that a certain Hermias was sentenced to pay a heavy penalty for failing to pay the tax on succeeding to his father's house, and another records a sale of property by an old man to his son at a nominal price, apparently for the purpose of evading the inheritance tax.

Judging by legislation over the world, the inheritance tax has come to stay. It is difficult to see how the law can be effective unless deeds, or gifts in contemplation of death or intended to take effect in possession or enjoyment after death are made taxable, nor how the tax in such case will be effective if not made a lien.

We would better assume then that the inheritance tax as a lien has come to stay; and this, notwithstanding there may often arise opposition to it. The code says it is a lien that remains until paid and that it feeds itself at the rate of ten per cent per annum. It is not necessary to suggest that such a lien is of vital importance to you.

Many questions are going to be raised. The law on the subject is not yet settled, for the reason that the law is new and few points have been presented to the Supreme Court. So far we have not established a rule as to what constitutes a deed in contemplation of death, nor when a deed can be said to be intended to take effect in possession or enjoyment after death. So far we must look largely to other States older in experience for decision, and there are few that are much older in experience.

Assuming that there is no question but what the lien will attach, several questions would naturally present themselves to you. Probably the first question you would ask yourself is, whether or not you are bound to set forth the lien. You may be certain that whether you are bound or not, your client will not be content with an abstract that does not purport to cover such liens.

You might follow the practice of attorneys I have known: In rendering an opinion of title, such attorneys find that the Record title to the property that they are examining is vested in the purported owner, subject to a string of exceptions as long as the moral law; the exceptions serving not to aid the client but to save the attorney from future embarrassment. What does it profit a client to engage an attorney to examine a title and have the attorney pass him all the difficult legal problems for his own solution? How would a client feel about employing you to search a title for him, and then to have you say, "This search does not purport to cover Inheritance Taxes"?

I assume that you gentlemen wish to approach this subject in a broad spirit, and are as anxious as we are to find a solution easiest and best for all.

Of course, there will be many cases which will escape the records, but those which are in the records you should reach some way. There is one class of cases which you surely should be able to find without difficulty. I refer to those cases where the Recorder's office has a record of deaths recorded occuring in the County and the records show the recordation of a deed after the death of the grantor.

QUESTION: Suppose a death has been recorded a few days before we make a search, how can we be sure the grantor has not died before the recordation?

MR. WARING: You are not supposed to set forth matters which are not of record. The problem will be difficult enough if you attempt to set forth those deaths which are of record.

QUESTION: In our County, the death record is not very well kept; it is generally ten, twenty or thirty days behind. What should be done in that case?

MR. WARING: That is one of the situations we would like to see remedied. In the interest of property owners the records should be such that the abstractor can easily consult them. It will be impossible for you to include the inheritance tax liens with any certainty, unless the death records are regularly recorded. And, moreover, they should be indexed. If this added burden is to be imposed upon you, the death records must be indexed, and if necessary the recorder must have assistance for that purpose.

MR. HARRELL: Sometimes a deed is not recorded until thirty days after the death of the grantor, and meanwhile we make an abstract of the title. What then?

MR. WARING: If a deed has not been recorded when you make your search, it is not of record, and you do not purport to cover matters not of record. As I have already stated, you will have trouble enough in this matter to include deaths that are of record. Of course, if you have knowledge of a death independently of the record, a fair regard for the interests of your client would lead you to make a non-official note of it. If the grantor should have died in Europe, or elsewhere, out of the County, you would not have a record of his death. And having no record, you could not abstract it. But, as before said, you would undoubtedly make mention of it if you happened to know of it.

THE SECRETARY: It looks to me as though all this opens up an endless amount of labor for the abstractor. The law is new to us. And we have much to learn about it. It would appear that often we will be placed in positions of great difficulty. You say that the law makes the tax a lien until paid. Do the statutes of limitations run against it?

MR. WARING: I think not. The question has not yet been decided by our Supreme Court. Until the Supreme Court has spoken upon the subject we can not say positively. The tax law itself says the lien shall remain until paid and shall bear ten per cent interest.

THE SECRETARY: That would further complicate matters. As I remember, the more distant the relationship from decedent the heavier is the tax. The tax is so graduated. Those heirs, who, under the law, are more remotely related to the deceased and who are subject to the higher rate of tax, very frequently have names different from the deceased. Suppose Smith deeds property to his distant relative Brown; suppose the deed was to avoid the inheritance tax; suppose it was recorded after the death of Smith,—we do not know of the relationship, are the innocent purchasers who have bought the property in good faith to be chargeable with the tax?

MR. WARING: Bear in mind that it makes no difference what may be the kinship between Smith and Brown. If the records show that the deed from Smith was recorded after his death, you should note this fact. Your duty ends there. The mere fact that the record shows that the deed was recorded after death raises the question of a tax due. The fact that names are different merely makes the record that much more important as the rate of tax would be higher.

THE SECRETARY: Would we have to search ever since the enactment of the law for all the cases where grantors have died before recordation of their grants? It seems to me that it opens up a field that is very hard, indeed, and very fruitful of labor.

MR. WARING: The situation is not as bad as it might seem. There will probably be but few cases of evasion by the methods under discussion prior to the enactment of the law of 1905, and not so many cases since then as one might think. But be that as it may, the important thing is, to look out for the future, to do what we can to secure a recordation of deaths and an indexing of such records. If searching becomes more expensive because of the lien, your charges will have to cover the extra expense. Purchasers will not consent to a practice which will leave the lien in doubt. It is not an easy matter to solve, surely, but we have got to get a solution. We of the Controller's office are doing all we can to solve it. We have prepared a set of petitions, orders and citations for distribution to the various Treasurers and District Attorneys. It seems best to cite every doubtful case as fast as they can be found. If a

tax is due it should be paid, because it is due the State and because the innocent future purchaser should be protected. If no tax is due a citation should issue anyway, and the grantee should be given a decree of court that no tax is due. This will remove any doubt and will remove any cloud on the title.

We expect that it will soon become the practice of the holders of property, where any doubt of a tax exists, to come in voluntarily and ask that they be cited by the District Attorney, so that they may get a decree it their favor. Such decree, after full hearing and time for appeal has passed, will become conclusive.

Suppose no doubt exists and no decree is secured, no citation is issued, the County Treasurer is good-natured, the District Attorney is good-natured, we are good natured, and say, "let the matter pass",—what is to prevent a new and ambitious future administration from enforcing the law in such case? And will not failure to enforce the law and failure to do what we can to bring these liens to light lead to injustice?

MR. WHITE: In the probating of estate it frequently happens that the appraisers appointed are friends or acquaintances of the deceased, or parties about to acquire the property; and the appraisement is generally very much lower than the value of the property. If the tax is paid under such an appraisement, does that conclude the matter?

MR. WARING: We are well aware of this abuse of underappraisement and are using our best efforts to stop it; by requesting the appointment of a special inheritance tax appraiser, where the regular probate appraisers have underappraised and the estate will not consent to a proper valuation; where an order has been entered fixing a tax and such order is based upon an improper appraisement, we take an appeal or ask for a vacation of the order as circumstances require.

MR. WHITE: When the Decree of this tribunal finds that all taxes have been paid, is that conclusive?

WR. WARING: If a court fixes and determines the amount of tax even though the amount be far too low, such decree would become conclusive after the time for appeal or vacation of it had gone by. But suppose the estate were inventoried at a million dollars, and no tax is paid, but the court finds in its decree that all tax had been paid. In such case we would come in conflict with Section II of the Inheritance Tax Law, which says that no estate shall be distributed unless the administrator shall produce a receipt sealed and countersigned by the Controller, or a copy thereof certified by him, and file the same with the court. Such a decree would be quite certain to be vacated by the court that made it, when the attention should be called to the error. Such a decree would not be entered except through fraud or error.

MR. BACON: It looks to me that it would be the duty of the attorney of the estate to see that the tax is paid.

MR. WARING: Yes.

MR. PRESIDENT: The administrator or executor, I believe, under the act, is made responsible under his bond for the payment of the taxes, is he not?

MR. WARING: I believe so.

THE PRESIDENT: And it is up to him, whether it is up to the attorney or not. In other words, it is rather up to the executor or administrator than to the attorney, because as we proceed in the matter of title examination, we find that an attorney is more and more removed from responsibility. He may do many things and still escape, but the administrator remains liable. In our country, the

prevalent practice is to appoint a special appraiser to fix and determine the inheritance tax. The Court appoints such appraisers; the amount of the tax is fixed, and is paid to the County Treasurer, and his receipt, countersigned by the Controller, is filed before distribution is had. Is it your opinion, Mr. Waring, that the fixing of the tax by the Court after the time of appeal has expired, is conclusive upon that question?

MR. WARING: I think so, after the time for appeal from or vacation of the order had gone by, subject to such procedure as vacation at any time for fraud.

THE PRESIDENT: The court being clothed with the jurisdiction to bear and determine the question, and it being a part of the decree of distribution, the decree must be conclusive.

MR. WARING: The decree, of course, would be conclusive only as to such property as is returned in the estates. If a man died possessed of a half million dollars of property and only ten thousand of it went through probate, that which was not included in the decree would not be concluded by it.

MR. McARDLE: In one County a father died in 1893. The estate was probated and went to the wife. She organized a corporation and conveyed the whole of the estate to the corporation. The County Treasurer, being familiar with the parties, after the wife died, took the matter up with the children. The title, of course, stood in the corporation, but as the wife held all the stock, barring four shares given to the four children, as directors, the Treasurer took the matter up with the son, and the inheritance tax was paid.

Suppose we had issued a certificate showing title in the corporation. What would have been our liability in view of the fact that the stock stood in the wife's name? We could not get hold of the company's books, because they were private property.

MR. WARING: The title to the real property was and continued in the corporation. You do not attempt in your certificate to follow the ownership of the shares of stock in the corporation which owned the land.

MR. RIXFORD: They collected the tax on the stock rather than upon the real property.

MR. McARDLE: That may be.

MR. WARING: There may be many cases we will not reach, but it will be unsafe for anyone to rely upon this. In the interest of the whole people, liens that exist should be brought to light, and liens which are of record should be shown as of record. Death records should be recorded and indexed. If deaths are not reported to the recorder, a law should be passed penalizing neglect to do so. When the records are properly kept and indexed, we hope that you will note those that are necessary, not because you are legally bound to do so, but because you are morally so bound. Because when you make a search you are acting for your client. It were better that you charge a larger fee than that you avoid a most important defect in his title. Of course, there are cases you cannot reach. You cannot as a rule reach cases not of record. You do not pretend to do so.

THE SECRETARY: It seems to me that all you should expect the abstracters to do would be merely to set out the deeds and encumbrances and titles, as we generally do, and in case of death, to set out the death certificate. Ordinarily, in stating a tax lien, we state the lien, and it is proper in most of the cases to state the amount of the taxes. But in this case all we could do, in the absence of a probate proceeding, assuming the title passed by deed which was given to defeat the inheritance,—all we could do would be to set out the deed, and then set out the death record.

MR. WARING: That is all, certainly. Then pass it on to the attorney.

THE SECRETARY: But would that not necessitate our setting up the death certificate of every man in the chain of title since 1905?

MR. WARING: If so, there would not be very many transfers since that date. After the matter is brought to date it should not be very difficult to keep the record up.

THE SECRETARY: And where we know absolutely of our own knowledge that the party was no relative of the grantor's, which we frequently do, we would not have to go into that matter, would we?

MR. WARING: I think so.

THE PRESIDENT: I think so, too. If a deed from a grantor is recorded after the recordation of that grantor's death, there is a *prima facie* case that the deed was not intended to take effect until after death, and it is a matter of record that should concern you, I believe, in every such case.

MR. McARDLE: What are you going to do when we have no record of death? In some of the counties there are unincorporated cities, and the death notices do not go there.

MR. WARING: That is a condition that, in the interests of the people, ought to be remedied. Where there are large cities in a county, some method should be adopted whereby the law should be made to cover the case, and recordation should be made in the Recorder's office. This is a question that will affect people more and more. Legislation is going to be demanded which will see to it that the man who is acting in good faith is not injured, while the man who is not acting in good faith will be compelled to comply with the law.

MR. WHITE: In regard to the liability of the abstract company, writing a certificate, finding the property vested in a person or corporation free and clear of all encumbrances, where there is a collateral inheritance tax due, what liability is there on the company for writing such a certificate?

MR. WARING: I do not think that the abstract company would be liable, except for those liens that are of record. Probably people of experience in your line of business could answer that question better than I. Are you liable for failure to call attention to a lien that is not of record? I think not.

MR. WHITE: I understand as you read the law, that it is a lien against the property, no matter how many hands the property has gone through.

MR. WARING: Yes, I think so. The man who has the property, the title to the property, is liable. Of course, he might come back upon the person who conveyed it to him, and recover from that person.

(MR. VAUGHN: Mr. President, *a propos* of the inheritance tax law, we have a law very similar in Arkansas. I was just reading the matter that Mr. Waring spoke about a moment ago.)

MR. WARING: In closing permit me to say a few words in support, nay, in defense, of the inheritance tax law, for no tax law ever was invented or levied that has not been complained of by those most able to pay it.

From Adam Smith down, the political economists have approved the system as most just and easiest of enforcement; most just, because by making liberal exceptions in favor of those dependent on the decedent, the State merely takes a small proportion from those who really get a windfall; easiest of enforcement because it is only the exception when a man who has accumulated much will so put it out of his control that the fact of contemplation of death can be effectively hid. Also the tax is meritorious in that it is

levied at a time when there is a readjustment of the interests upon which it is levied, and so it does not interfere with economic stability as much as do many other forms of tax. It has the further merit of being a corrective of the modern tendency toward centralization of wealth in the hands of the few. There is every reason to believe the law has come to stay and let us do all we can to make it effective and fair.

THE PRESIDENT: Gentlemen, I think this is a most fruitful subject for discussion. I think Mr. Waring has demonstrated that there is a source of considerable liability and responsibility upon the part of abstracters and title men involved in this matter. It would fall a little more heavily upon the men who are insuring and certifying titles than upon an abstracter, because the abstracter has the power to set forth in his abstracts very fully and wholly what is shown by the record, and that is then the end of it. But not so with the insurer. It has been one of the matters that has attracted our attention in the South, and we have been very vigilant to see that the inheritance tax shall be paid. We find sometimes deeds upon record describing all of the property owned by the grantor at the date of the deed. We have found deeds upon the record which purport to convey all of the property of the grantor or any that he may thereafter during his lifetime acquire. Such deeds are almost conclusively made in anticipation of death, and we would never certify or issue a policy without making an exception of the fact that such recital is there, and either satisfy ourselves that the deed was not made in such contemplation, or that the inheritance tax was paid. That plan has been adopted, I say, with us, and as Mr. Waring has suggested, where an abstracter finds upon record a deed dated at a given date, and recorded at a later date, with the death of the grantor intervening, especially if there be any considerable period of time elapsing between the date of the deed and the date of its recording, it is almost conclusively presumptive that such deed was made in contemplation of death, and we note and make some inquiry upon the subject. The difficulty has been heretofore that no machinery has been provided by the law by which that could be judicially determined, and I was very glad indeed to hear Mr. Waring say that plans were being perfected by which the District Attorney will proceed to have that question judicially determined upon the application of any person interested. It will enable us to cure this matter up. Many suits have to be brought to quiet title, and one of our Superior Judges took a fling at one of the title companies by inquiring not long ago—when a matter of quieting title was presented to him—very dryly, "Is this a suit to quiet title, or to quiet a title company? Which is it?" The attorney remarked that it was both, and then the Court proceeded to hear the cause and render a decree. I would like to hear from Mr. Rixford upon this matter, for he has had very large experience in all title matters.

MR. RIXFORD: I was not present at the reading of this paper of Mr. Waring. There is only one thing that strikes me from the little conversation and discussion that has taken place since I came in, and that is this: that if a deed is made, you must not forget that the Civil Code provides that it is presumed to have been delivered at its date. Of course, if, in the examination of title, we find a deed like that, and it has been recorded several years, or some years, after its date, we always raise the inquiry—that is, *we* do.

THE PRESIDENT: We do, too.

MR. RIXFORD: We have to do it very carefully too. We do not ask, "Was that deed delivered?" We get the people up before

us and ask what was done, and why that deed was kept after it was made, without being recorded. It frequently turns out that it was kept in an old bureau drawer and never would have appeared at all but for the death of the grantor. Therefore, we generally tell the people to go to the record of death, in the case of a deed recorded long after its date, and if we find that the grantor has died and that then the deed was put on record, we regard it as a suspicious circumstance. Still, it seems to me that the Code throws the burden upon the people in this matter, and when you bring a suit to recover an inheritance tax, you have got to rebut that presumption of the Civil Code.

MR. WARING: Burden of proof is often a very bad thing to rely on, for the reason that the burden may be shifted, or to put it better, "it may be up to the other fellow to move". It is then incumbent upon the other fellow to make his proof. If the State brings the grantee into court, and the facts are against him, the burden of proof may not help him very much. A presumption, unless it is a conclusive presumption, is a very poor thing upon which to rely.

MR. RIXFORD: That is true. I do not raise it as an absolute presumption, of course. It occurs to me that, so long as there is nothing on record to the contrary, it may be that we are assailing a good title. Still, I say that we are very careful where a deed has been recorded after the death of a man or a woman making it, to investigate the matter.

MR. WARING: You have a conflict of presumptions there—the presumption that the deed was delivered when it was made, and, on the other hand, where the death has intervened between the date of the instrument and the date of recordation, there is another *prima facie* presumption, it may not be one raised strictly by the law, but in a way it is a presumption, as Mr. Gates said a while ago, that it was a deed in contemplation of death or to take effect after death.

MR. RIXFORD: I hardly think it would go so far as being a legal presumption.

MR. WARING: It might not be a legal presumption.

MR. RIXFORD: I will not say that it would not be, but I think you would have to overcome the presumption created by the date of the deed. When you do overcome it, I presume your inheritance tax has attached.

MR. WARING: That is the idea; it might be circumstantial evidence, which, with the proper surroundings, would become most convincing.

THE PRESIDENT: Mr. Pierce asks me what would be the condition of the Torrens law registrar under such a condition. Not being a wet nurse for the Torrens law in this State, I do not care to talk for it. Is there any other question to be asked of Mr. Waring?

MR. VAUGHN: I just wanted to say a few things that came to my mind. We have an inheritance tax law in Arkansas, and I have been authorized by the Attorney-General to bring several suits in regard to it. So I know that it has some striking comparisons as well as some contrasts with your law in this State. In the first place, it is similar in respect to the language imposing the tax, in the matter of its remaining a charge on the real estate of the party whose estate is to pay it, until it is paid, but we have the proviso that it shall not be a lien upon such real estate for longer than five years. That frees the real property of the lien five years after the date of the death of decedent. But the statute does not run against the State so far as the collection of the tax otherwise is concerned. We have no official record of deaths in our State at all, either city or county, and that makes it pretty hard for us to find out where

the tax exists, and it is up to the representatives of the Attorney-General and Treasurer to investigate and ascertain. Another thing: The law does not require the administrator to file an inventory of real estate with us, but only of personal estate. The real estate does not go into the probate court, unless there is some special exigency like the payment of taxes, and so forth. But under a law passed this year, it is provided that the executor or administrator must file also a correct statement of inventory of real estate, so the matter will be a good deal simpler after that law is in operation, and it will be made a great deal easier for us to follow up the inheritance tax and see whether a right to it exists or not. We have one case now pending—rather a big case—involving some of the questions that have been discussed here this afternoon. The Catholic Bishop of the State, just before his death two years ago, made a deed conveying all the property that he held to his successor, a man who was his successor and coadjutor, and later on he made a will—all within two or three months before he died, conveying to him everything he had. Some of the church property with us would be exempt from the tax, but a great deal of it would not be. They have a lot of property—probably a million dollars' worth—that is income-bearing. Clearly both of the transactions named were for the purpose of avoiding the payment of the tax. The question arising there is, whether we would be put on notice by a deed of that character, or not, although to a large extent an abstracter could hardly be expected to tell whether a certain deed filed about the time of the death of the decedent was entitled to be regarded a fraudulent one, or not. It is just like the question of a fraudulent conveyance; it might affect the title very seriously, and yet it would not affect it at all unless the deed were brought into court and shown to be fraudulent. So we have decided, in order to simplify the matter, and decide what transactions are actually under the statute, to provide a form and send it out to abstracters and prosecuting attorneys and other officials in the State, to enable the owner of real estate, or an executor or administrator, to come into court upon his own individual volition and have it affirmatively shown that there is no tax due. When he comes into court, the representative of the State is notified, and if he thinks there is a tax due, the matter is threshed out before the probate court, the forum provided by the act, and the matter is decided one way or the other, and there is a record that the abstracter can get.

Abstract of Probate Proceedings

(By C. W. Leach, of the Title Insurance and Guaranty Company of San Francisco.)

THE PRESIDENT: One of the most important branches of the title business, whether abstract or otherwise, is the examination of court proceedings, and especially of probate proceedings. We have been discussing here under the inheritance tax law some of the problems that present themselves under the probate law. We are fortunate in having secured Mr. C. W. Leach, Abstracter of Court Proceedings of the Title Insurance and Guaranty Company of this city, to give us a paper upon the subject of the abstract of probate proceedings, a subject which is always a matter of more or less difficulty, sometimes of animadversion and many times of return to the abstracter by the attorney, who wants more light or

further light, or something else in the case. The matter of a correct abstract of court proceedings is one which is of interest to every examiner of titles. I take pleasure in presenting to you Mr. Leach, who will discuss this question. (Applause.)

The abstracter's main difficulty if he aspires to anything like a scientific knowledge or skill is a definite program. Generally he learns most of his work by rule of thumb and by oral instruction; betters his instruction by scraps of reading, by plentiful blunders corrected and by random bits of legal lore, by cultivating some acquaintance with the Code of Civil Procedure. Such a process produces an inadequate and uneven knowledge of principles. Most abstracters would be glad to know more and would apply themselves, I believe, to learning if they could discover any source of instruction within their practical reach. But there is no one who knows, who finds it enough to his interest to give any systematic training or exposition. The attorney or attorneys with whom the abstracter deals may now and again, when too grievously afflicted by bad work, explain some general matter of doctrine, but are too busy to do much in this line and text books give little comfort. When I began my work I procured a copy of the only recent American book I could hear of and when my eye fell on the ample proportions and I felt the "heft" of my new purchase I thought my troubles would be extinguished at least *pari passu* with the rate of progress I should make through the volume. It was Warvelle's Abstracts of Title and it is a useful and a good book. But I soon perceived that no book written to apply generally to conditions throughout the United States could come to close quarters enough with the subject to be of great help. Being unable to deal with matters of practice the author is driven to deal for the most part with legal principles, and to treat even these in a very broad way. There would not be demand enough for a book written to meet the practice of any one State so that the difficulty seems of a kind not to be easily overcome.

Whatever the remedy may be the consequence, of course, is to make rather haphazard abstracting and especially to make abstracts unnecessarily lengthy. If the abstracter leaves anything out of his abstract that the attorney wishes he is pretty sure to hear of it, while if he puts in more than is necessary the attorney may groan or even, on very strong provocation, perhaps, swear, but he is unlikely to do either loud enough for the abstracter to hear.

In the special point of probate proceedings a standard is provided for the use of abstracters of the title companies in San Francisco by means of printed forms used by these companies, wherein the precise material desired is specified and the abstracter as a rule puts in neither more nor less. Amongst the four companies doing business only two forms are in use and the differences between these two are slight; no doubt a form could be agreed upon that would satisfy all the companies. These forms have been in use for a

number of years without alteration and have been tried out in practice on interests of great magnitude and proceedings of great complexity, and the circumstance seems to justify the inference that there is a substantial agreement amongst the best legal experts in this work as to what details are necessary to be shown in the abstract of probate proceedings in order to enable the attorney to pass on titles involved.

These forms, however, are used by the title insurance companies only; and there is a difference, it must be granted, between the requirements under these conditions and the requirements to be met by the abstract of title. In a title insurance company the attorney and the abstracter are members of one organized institution and the division of labor between them is determined by office rules and understandings easily made and easily modified on occasion. The abstract, on the other hand, goes out from the abstracter to any attorney whom it may concern and to attorneys who do not know, it may be, and who have no means of ascertaining, unless it be by what literary critics call "internal evidence", the competence of the compiler. Some attorneys under these circumstances prefer and require, if they are in a position to do so, very full abstracts, leaving nothing to the suppositious discretion of the abstracter.

These conditions seem to me sufficient to support the conclusion that the forms referred to, though probably as good as can be devised for their special purpose, would be found rather too brief to be followed exactly in an abstract; and as a matter of fact all the abstracters who use these forms for reports to their own offices make fuller reports when preparing abstracts for outside use.

Assuming then that we have no official standard or guide to determine the details of the abstract in probate proceedings and also that the abstract should be made as brief as practicable, let us consider what principles should direct the abstracter in the selection and rejection of material. Perhaps all abstracters in their work are haunted occasionally by the idea that their business is to show whatever is in the record. If we were back a few centuries we should know that the suggestion is the work of a certain party called in medieval books the Ancient Enemy. The sole object of the abstracter's report is to set out the legal evidence of a transfer of title or of an encumbrance. All material therefore which is found in the record is nothing to him any more than if it did not exist, which does not concern the transfer or the encumbrance of the particular parcel of land with which he is for the moment concerned. Of such parts of the record which should be ruled out of consideration for purposes of abstracting there are two divisions or kinds, viz:—matter which is proper to the record, though not to the abstract, and matter which is proper to nothing, being mere surplus words. An inspection of the Register, commonly the first step taken in the preparation of a report, and a glance at the papers subsequently, suffice to determine what *filings* shall be dis-

regarded. Claims filed, proceedings connected with sales of personal property, with the family allowance and, of course, all proceedings affecting only real property not under search may be put aside in this way. They are matters proper to the record, certainly, but not to the abstracter's purpose. It is more difficult in practice to deal with the question of absolutely superfluous portions of the record, because something more is necessary to be known than a general principle such as is applied in the other case. For it has to be known what *is* proper or at least essential to the record and what not. Occasionally filings are thrown out—as where an unnecessary notice of hearing is given, as quite frequently happens, or unnecessary affidavits, duplicate or otherwise; but more often the problem is to eliminate from the *body of a paper* such portions as are useless. Petitions produce the greatest difficulty—all of them—for probate of will, letters of administration, for orders directing or confirming sale, even an order to show cause may develop a bad case of fatty degeneration. The temptation is very strong to follow the language of the document and I confess that, with immaculate principles and the best intentions in the world, I do not always succeed in pruning down the wordy petitions to be as small as the brief ones. I take it that the proper authority in these matters is the Code of Civil Procedure and that as a rule statements made that are not required by that authority may be omitted as mere verbiage, the abstracter of course being held to due caution and bound by a presumption in favor of the necessity or propriety of the contents of the paper he is abstracting. Where the departure from requirements is clear, however, the useless language should certainly be ignored.

Affidavits in proof of notice of hearings are usually set out quite fully and seem not to be compressible to any great extent; but the abstract of wills and recitals in orders and decrees can generally be reduced far below the bulk of their originals. It is the custom, I know, of some abstracters to set out a will literatim, concluding with the signature, the witnesses, etc. There are, of course, occasionally very nice questions of construction and law which make it necessary to have the exact words and all of them. But under the conditions of our legal and social institutions in California complicated, settlements are rarely attempted by will and I have had myself very few other than plain and obvious provisions to deal with; and in such cases I have employed my own language in setting forth the terms of the will if I thought I could gain in brevity by it, omitting all matters not dealing with the realty under search and the appointment of executors, if any, and omitting all showing as to the execution of the will, where probated, on the ground, which seems to be strongly stated in the books, that the probate of the will is conclusive as to its due execution. By these means rather formidable looking documents are sometimes reduced to a very brief compass and without loss for the purpose in hand. I need not

say, of course, that great care and caution are presumed on the part of the abstracter so that all doubtful matters whatever are left entirely to counsel and set out fully for their benefit.

Recitals to decrees in probate form another frequent subject for the trimming process. Final decrees of distribution are often preposterously long, reciting at length each step in the proceedings, though most of these have been already before the court and pronounced upon. There is a section in the Code providing that orders and decrees made by the court or a judge thereof in probate proceedings need not recite the existence of facts or the performance of acts upon which the jurisdiction of the court or judge may depend except as otherwise provided; and I have not been able to learn that it has been declared unconstitutional, though plainly repugnant, it appears, to the constitution of many attorneys. The meaning seems to be that if jurisdiction is as a matter of fact obtained, the recital can add nothing; which strikes the mind of a layman as a very sensible notion. I am accustomed to act upon it in making abstracts by making very short recitals of jurisdictional matters when all proceedings *are plainly regular*. On the other hand where there are irregularities I give the terms of the recitals at length. It seems to me also that recitals as to points necessarily before the court for the purpose of the particular decree in question are enough.

The greatest weakness of abstracters according to my observation (I come back to my point of beginning), though a weakness not really peculiar to them, is lack of sufficient knowledge and especially knowledge of general principles. Nobody can ever really know how to do a thing well till he knows why he does it; and the most of bad abstracting I believe comes from not knowing the reasons why. I have already remarked that there seems to be unusual obstacles in the way of securing proper instruction. Even the correspondence schools, which lead the way at least in the variety of their subjects, have not, so far as I have observed, included this business in their curricula and it is not clear that a great deal could be done by such means. I should like to suggest some remedy that would make an end of all the difficulties so that we might, after the fashion of the fairy tales, live happily forever after; but I confess my inability to do so. It is up to the individual abstracter to try to become a scientific workman and it is up to attorneys who deal with him to render what assistance they can. That it is worth while to make a serious effort, even if the way be not quite easy, I am quite convinced. The operation of economic principles will eliminate the system in which the abstracter of court proceedings is almost wholly a copyist and the attorney does all the work of examination except a few insignificant details. The whole work of legal examination consists of three distinct operations: First, to determine if proceedings are regular; second, to determine what the consequence upon the title is of any irregularity that appears,

and third, to suggest the proper remedy. The two latter operations can be performed only by men of special ability, knowledge and experience. It is work that can be done only by thoroughly equipped lawyers. Such men are rare enough to command high salaries and fees. On the other hand, the task of determining whether proceedings are formally regular, requires much less extensive knowledge and slighter powers of mind and the men who can do such work are more numerous and their rewards in money less. Under these conditions to pay a high grade man high rates of pay for doing work that can be done fully as well, and on an average more expeditiously, by an average man is a direct economic loss. The system of a division of labor between abstracter and counsel, according to which the abstract will be confined to a skeleton of probate and other court proceedings, with notes setting forth irregularities, in competition with a less efficient organization, will win out in the end. If there is, then, work for abstracters to do and work for lawyers to do in the premises there is also an obvious problem of business management.

I hope the managers who undertake this problem will bear in mind the case of the railroad brakeman who was haled before the superintendent of the road on complaint that he did not call out the names of the stations with sufficient distinctness. He said they could not expect a fine tenor voice for forty dollars a month. (Applause.)

THE PRESIDENT: I think you will agree with me when I say that, while the abstracting of titles and the examination thereof is ordinarily a dull and prosey task, that the tedium has been relieved by the paper to which you have just listened, which, in its excellence of detail and execution, must commend itself to all of you who have listened so attentively to its reading. In connection with that, when Mr. Leach referred to the fact that they have two forms in the city of San Francisco, we have more than two, but I was in court not long ago where one attorney was objecting to the pleading of another, and his ground was well taken, and the court was inclined to rule his way, and the attorney whose pleading had been criticized arose and said: "Your Honor, there are two ways of doing this," and proceeded to exemplify that there were two ways, and after he had finished, the attorney upon the other side answered the argument in this wise: "Your Honor, I agree with the gentleman. There are two ways—there is a right way and then there is the way that he has done it in this case." So there are nearly always two ways of abstracting court proceedings, the right way and the other way. *A propos* of that, I wish to relate an incident that occurred some years ago in our own office. We had written a certificate and sent it abroad, and it came back without letter and without comment, except that across one of the exceptions which he had inserted in the certificate appeared these words: "This shows good eyesight, but damn poor judgment." I have always thought that that sentence was worthy to have been placarded and hung from the walls, because it has occurred to me a thousand times in things that I have seen—it shows good eyesight in abstracting or in any other kind of work.

Gentlemen, our formal program has come to a conclusion. We have with us this afternoon three gentlemen from abroad. We are honored by the presence of the gentleman who was elected the President of the American Association of Title Men at its recent

session at Seattle, and I wish to introduce him to you to talk to us for a few minutes on any subject that he may think we need instruction on. I present to you Honorable W. R. Taylor of Kalamazoo, Michigan. (Applause.)

MR. TAYLOR: Mr. President and Gentlemen of the California Land Title Association: The President's limitation would almost require me to sit down before I began, because I am to talk to you upon some subject concerning which I feel that you need to be instructed. I am sure I do not know what subject that would be. I have been very much pleased to be here at this meeting of your State Association, I have been very much pleased as well as educated by the papers that I have listened to, and I have examined some of the abstracts on your table with a great deal of interest. It is upon that examination that I based my first remarks, chiefly, that I do not know what enlightenment you could get from me.

I find in all of these abstracts that I have looked at a very careful and thorough manner of setting forth the different factors which make up the chain of title. There is, of course, a perfect way of making an abstract, which may contain perhaps all of the salient features. There is also the abstract afflicted with fatty degeneration, which Mr. Leach has just referred to, and which might be more valuable if it were shorter. I think you have obtained here in the abstracts that I have noticed a very happy medium in that respect; that these abstracts set forth the titles with sufficient minuteness and avoid the verbosity which we find in some of our abstracts.

In the portion of the East where I come from, our customs and our fees as well were pretty well established for us in the days when people did not expect very much in the way of abstracts, and when they got less. Consequently we are continually steering between the different problems, one to satisfy our consciences in the matter of furnishing what we believe to be a good abstract, another in satisfying the customers as to what we can make them believe to be a good one, and in satisfying our assistants in what we can pay them—and our creditors in the promptness with which we can meet their demands with the little surplus which is left.

It appears also that you have in this State, in conjunction with your abstract work, perhaps the highest development to be found anywhere in the country in the matter of title certificates and also guaranty policies. It seems to me, therefore, that this is an especially fertile field in which to work out the problem as to which of these methods afford the best protection to the public, and as to which one of them is going to survive, and which of them will be eliminated. They all enjoy here, as I understand, a fair degree of popularity, the abstracts, the certificates of title, and the guaranteed policies. And in the furnishing of them in your State a very high standard of excellence has been attained.

In the matter of your organization, I note that you have the

same difficulties which I believe exist in every State where they have an organization of title men, and which is also a problem with the American Association of Title Men, and that is to get into it all of the persons who need to be in it, persons and firms who in fact need most to have the benefit of this organization being usually the ones who are not in it. For instance, it is necessary for this organization and every State organization, as one of its aims, to bring the standard of making abstracts up to as high a level as possible, in order that there may be no excuse for the unrest and dissatisfaction which exists in the public mind as to what they are receiving in the way of protection. And the men who take no interest in these organizations and are staying out of them are usually furnishing the worst work, the work which no insurer of titles could base a certificate upon, which no attorney could give an opinion upon, which would be of any value, however able the attorney, and it is by the work of those men largely that the business of making abstracts is judged.

One of the aims of this Association and kindred Associations should be to either get men of that sort out of the business, or, if it is not possible to get them out of the business, bring their standards up to a point where the public will receive something of an adequate nature for what it pays for their service. We have the same problems in Michigan, and I think the other States have the same trouble in the matter of getting these people interested in their organizations. We have been sending out our proceedings in the hope of interesting them. In that way, they get, of course, practically all the benefits of the Association, without bearing any of the burdens. They get the papers which are presented here without paying railroad fares or hotel bills. I believe that you strike a happy medium in this matter when you now decide to send your proceedings to all of the abstracters in the State, but with a little note attached, "This is a farewell. I trust you will come in and be one of us."

There is also a lack of interest on the part of the State Associations in affiliating with the National Association, as well as a lack of interest in many of the States in forming associations at all. We now have State organizations in, I believe, twenty-two States, and about twenty of those were represented at Seattle, in one corner of the nation, which I think a very creditable showing. But we need to have twice as many State Associations organized, and we need to have all of them in the American Association, in order that we may co-operate for either aggressive or defensive action, as may be necessary, for the advancement of this business, in order that we may get the benefit of the ideas from different parts of the country as to what is going to be the best way, in view of the different methods now obtaining for furnishing information regarding land titles.

Along this line, I believe the basis of membership which the American Association has provided is a very fortunate way of

settling that matter. Every one of you gentlemen, by virtue of the fact that you have voted that your State Secretary shall pay dues to the National Association, becomes thereby a member of the American Association of Title Men. Every one of you, if you were to attend any of the meetings of the National Association, would have the same voice and vote as every other person at that meeting. On the other hand, where the association does not affiliate with the National Association, or where no State Association has been organized, the individual abstracter may attain a membership in the National Association, and also have the same privileges as a member of a State Association would have, where that State Association is affiliated with the National organization. In that way, every abstracter who is affiliated with an organization, either State or National, has the incentive to bring to these general meetings, where all of the States are represented, his ideas, and take away such ideas as can get from others there. He contributes just as much to the common fund, and takes just as much out of it, as every other member of the association.

I am very glad to have met with you here today, and I hope I may have the privilege of seeing and hearing from some of you at the banquet this evening. (Applause.)

THE PRESIDENT: While we all of us expect to meet tonight around the festal board (I believe that is the accepted and proper term of the place where we expect to be), I wish to say that we have with us also another gentlemen from the South, from Mississippi, and I want to have him speak to you for a few moments. (Applause.) Mr. M. P. Bouslog.

MR. BOUSLOG: Mr. President and Gentlemen of the California Land Title Association: It seems to be proper nowadays to begin most of a man's speeches with an apology therefor. I can assure you that I have very good grounds in presenting my apology that I am no speaker. I am glad to be with you, gentlemen. As you have observed from my introduction, I am quite a distance from home. I have had the good fortune to have been present at the meeting of the National organization at Seattle, and now I am traveling on my way to Los Angeles, and from there I am going back to Mississippi. So I have taken advantage of this occasion to be present with you at this meeting, and I assure you that I have been very much interested and entertained in the proceedings here. We all get good ideas from association, and the papers which we have heard read here, while they are more or less of local interest, perhaps, yet contain many points which we all find in common in our line of business.

I was much gratified in noting the fact that you had renewed your membership in the American Association. I hope that the other State Associations will be as prompt in asserting their allegiance to that Association.

The problems to be solved by the American Association are very important to our welfare. That matter has been very fully covered

by Mr. Taylor in his remarks, and by the other gentlemen who have preceded me. But there is one point which was discussed especially at the Seattle meeting, and that was the point of lining up our forces for a uniform method throughout the country of meeting the spirit of unrest or of dissatisfaction which seems to exist amont the public generally, in the direction of better methods of registration of titles, better methods of possing title to real estate. We must educate ourselves to a better standard, not only in efficiency in our own way, from out of all our efforts, from out of the efforts of the different State Associations, backed by the American Association, we may eventually evolve an American system of title registration. We must fight the encroachments being made upon us by the Torrens advocates, and we must also get rid of the Torrens laws that now exist in the different States. While they are there, they may be more or less operative or inoperative, but still, so long as they are on the statute books, they are a menace, and they should be removed. Some united effort should be made by associations of the different States where those laws exist to get them removed from the statute books. They will eventually be supplanted by a better system—of that I feel very sure. The matter has now been taken up in some manner by the American Association. A special committee has been appointed to investigate into the matter during the coming year, and to make its report at the next meeting, which is to be held in Detroit. We look forward to this report with much interest, and hope that from this beginning something good will result. It is a matter in which the National Association will have to have the co-operation of the various States, and of the individual members of the association from those States, and any ideas or suggestions that one may have as a member of those State Associations, I am sure will be cheerfully received by the American Association officers and by the committee mentioned especially.

I just wanted to mention this point as having been brought out in the proceedings at Seattle very fully. I thank you gentlemen for attention and for the pleasure of being with you. (Applause.)

THE PRESIDENT: We have also with us another gentleman from the South, who has talked to us upon one or two occasions and participated in our debates here. I believe, however, that we would be very glad to have a word of parting, or perhaps a word of final greeting, from Mr. Vaughan of Little Rock, Arkansas.

MR. VAUGHAN: I feel that I would be trespassing upon your time, Mr. President, to talk any further, as I have already made some remarks yesterday, and have participated quite freely in your discussions here.

I know that meetings such as we have had are and will continue to be of great benefit to the participants, and that this California Land Title Association will prove to be of great benefit, not only to abstracters, but to the public generally.

Just a word in regard to the American Association of Title Men. It fell to me to look after the printing of the proceedings of the Des Moines meeting last year, and the Committee on Publication and

the Executive Committee have also delegated to me that duty for the proceedings of the Seattle convention. I want to say that I am very glad to have met personally all the gentlement present and want to get into personal touch with them as an officer of the American Association. I trust I will be able to get at the proceedings without any great delay, perhaps in a month or six weeks, and that all of you will procure a copy and will join with us in this great movement for a nation-wide improvement in the title business.

THE PRESIDENT: I believe, gentlemen, that that closes the work of this session. The banquet has already been announced, and is to be tendered to the visiting title men by the title companies of of San Francisco tonight at Berges-Frank's Restaurant on Bush street, above Kearny.

THIRD ANNUAL SESSION

OF THE

CALIFORNIA LAND TITLE ASSOCIATION

Secretary's Minutes

Thursday, August 19, 1909.

The meeting was called to order at 2 o'clock p. m. by the President, Mr. Lee C. Gates.

The President called the attention of the members to the fact that the minutes of the last annual session of the Association were printed in full in the record of the proceedings thereof. Upon motion, duly seconded, the reading of such minutes was dispensed with, and they were ordered to stand approved as printed, no corrections being suggested.

Mr. Carmany moved that the next meeting of the Association be held at Los Angeles, which motion was seconded and unanimously prevailed.

General discussion followed as to the time of holding the annual meeting at Los Angeles, at the conclusion of which consideration of the matter was deferred to a later time in the meeting.

The remainder of the session was devoted to papers and addresses and discussion thereon.

Mr. Lee C. Gates, attorney for the Title Insurance and Trust Company of Los Angeles, President of the Association, delivered his annual address.

Mr. James N. Watson, manager of the Solano County Abstract Company, read a paper entitled "Certificates of Title v. Abstracts."

Mr. E. H. Rixford, manager and attorney for the California Title Insurance and Trust Company of San Francisco, delivered an address on "Country Abstracts."

Mr. Ross E. Pierce, secretary of the Pierce-Bosquit Abstract and Title Company of Sacramento, and secretary of the Association, read a paper on "Scattered Observations on the Abstract of Title."

The President called upon Mr. Vaughan of Little Rock, Arkansas, treasurer of the American Association of Title Men, to address the meeting upon "How the Abstract Association in California Impresses a Man from Arkansas," and Mr. Vaughan responded in happy vein.

An adjournment was then taken until the following day at 10 o'clock a. m.

Friday, August 20, 1909.

President Gates called the meeting to order at 10 o'clock a. m.

The question of the date for holding the next annual session at Los Angeles was called up and on motion, duly seconded, the time for such meeting was appointed for the last Monday and Tuesday in June of 1910.

On motion by Mr. Carmany, seconded by Mr. Watson, all of the present officers of the Association were elected to fill again their positions for the ensuing year.

The President suggested to the executive committee the advisability of selecting topics for papers and addresses for the next year, and members to prepare them, at as early a date as possible, so that no one would be asked upon too short notice, and that the program might be a well considered one.

Mr. Watson moved that the State Realty Board, the California Bankers' Association, and the Bar Associations of California be each made honorary members of this Association, with the privilege of sending a delegate for each association to attend the meetings of this Association, and that the secretary notify each of them of such action. Mr. Carmany seconded the motion and it passed unanimously.

Mr. B. S. Wilkins, associate counsel of the California Title Insurance and Trust Company of San Francisco, then delivered an address on the subject of "Some Incidents of Title Insurance."

Mr. Eden moved the publication by the Association of 250 copies of the proceedings of this meeting. The motion was seconded and unanimously carried.

Upon the question of sending copies of the proceedings to all abstracters in the State, irrespective of whether they were members of the Association or not, the secretary urged each and all of the members to do everything possible to increase the membership of the Association, to include all abstracters of the State, but suggested that general distribution of the proceedings to non-members should not be continued indefinitely. Upon motion by Mr. Eden, seconded by Mr. Carmany, it was voted that the Association this year send copies of its proceedings to all abstracters of the State, and to the officers of the National and other State Associations, but that a note be appended notifying the abstracters of the State who are not members that the proceedings of the Association will in the future be sent only to members.

A recess was then taken until two o'clock, p. m.

Afternoon Session.

The meeting was called to order at 2 o'clock p. m., President Gates in the chair.

The President announced that his understanding of the motion

that incumbents hold office until the expiration of the coming year included committees.

Mr. Pierce then read his report as treasurer of the Association, which was upon motion, duly seconded, unanimously ordered accepted and placed on file.

On motion of Mr. Watson, duly seconded, the secretary was instructed to forward to the American Association of Title Men, the amount necessary to maintain the membership of this Association in the organization.

Mr. Robert A. Waring, Inheritance Tax Attorney of the Controller's office of the State of California, then addressed the meeting upon the subject of "Inheritance Tax Liens on Real Estate," which was followed by an extended discussion of the subject.

Mr. C. W. Leach, abstracter of court records of the Title Insurance and Guaranty Company, read a paper upon "Abstracts of Probate Proceedings."

Mr. N. R. Taylor of Kalamazoo, Michigan, President of the American Association of Title Men, then addressed the meeting.

Mr. P. B. Bouslog, President of Abstracters' Association of Mississippi, was called upon to address the Association.

The secretary suggested the absence of a quorum of the Membership Committee of the Association at both the last annual session and the present session, and moved the acceptance as members of the Association of all of the title companies and abstracters whose names had been presented during the past two years, which motion was duly seconded and unanimously carried.

The secretary moved a vote of thanks of the Association to Mr. D. O. Mills, owner of the Mills building, for the courteous use of the assembly room in that building in which to hold the present session of the Association. Seconded and unanimously carried.

On motion of Mr. Watson, duly seconded, the thanks of the Association were extended to the title companies of San Francisco for their entertainment of this convention.

At 6:30 in the evening a banquet was tendered the visiting members of the Association by the title companies of San Francisco.

Adjourned.

MEMBERS OF CALIFORNIA LAND TITLE ASSOCIATION

Arrangement by Counties.

Alameda—Alameda County Abstract Co., 426 Tenth street, Oakland.

Amador—M. E. Fontenrose, Jackson.

Butte—W. T. Baldwin, Oroville.

Contra Costa—Contra Costa Abstract & Title Co., and Martinez Abstract & Title Co., Martinez.

El Dorado—Pierce-Bosquit Abstract & Title Co., Placerville.

Fresno—Fresno County Abstract Co., 1117 K street, and San Joaquin Abstract Co., Fresno.

Glenn—John H. Graves, Willows.

Humboldt—Belcher & Crane Co., 531 Third street. Eureka.

Lassen—Lassen County Abstract Co., Susanville.

Los Angeles—Title Insurance & Trust Co., Franklin and New High streets, Los Angeles.

Madera—Madera Abstract Co., Madera.

Marin—Marin County Abstract Co., and Abstract & Title Co., San Rafael.

Mendocino—Ukiah Guarantee Abstract & Title Co., Ukiah.

Merced—Simonson & Harrel. Merced.

Monterey—Salinas Abstract Co., Salinas.

Nevada—Pierce-Bosquit Abstract & Title Co., Nevada City.

Orange—Abstract & Title Guaranty Co., and Orange County Title Co., Santa Ana.

Riverside—Riverside Abstract Co., Riverside.

Sacramento—Pierce-Bosquit Abstract & Title Co. (now compiling plant), and Sacramento Abstract & Title Co., 701 I street, Sacramento.

San Diego—Union Title & Trust Co., 903 Fourth street, San Diego.

San Francisco—California Title Insurance & Trust Co., Kohl Building; Pacific Title Insurance Co., 420 Montgomery street; Standard Title Insurance Co., Mills Building; and Title Insurance & Guaranty Co., 250 Montgomery street, San Francisco.

San Mateo—Abstract of Title Co. of San Mateo County, Redwood City.

Santa Barbara—Santa Barbara Abstract & Guaranty Co., Santa Barbara.

Santa Clara—San Jose Abstract Co., 74 N. First street, San Jose.

Solano—Solano County Abstract Co., Fairfield.

Stanislaus—Modesto Title Abstract Co., and Stanislaus Land & Abstract Co., Modesto.

Tulare—Tulare County Abstract Co., and Visalia Abstract Co., Visalia.